The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Michael H. Jeung
438 Elder Drive,
Claremont, CA 91711
(909) 776-5511
mjeung@uchicago.edu

June 12, 2023

Dear Judge Walker:

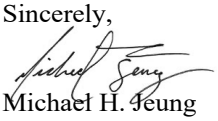
I am a rising third-year law student at the University of Chicago Law School applying for a 2024–2025 term clerkship or the next available term in your chambers. My desire to clerk stems from my six years of experience competing in, coaching, and judging mock trial and moot court, during which I discovered a passion for creating and dissecting arguments. My time in law school has similarly been filled with intellectual exploration and ideation, skills that I hope to continue developing as a clerk. My experiences in both my law school's Federal Criminal Justice Clinic and the Los Angeles U.S. Attorney's Office focused my public service goals towards the federal criminal justice system. I admire your wealth of experience as a Covington alumnus, Assistant United States Attorney, and district judge who has presided over important and consequential cases. I share your commitment to public service and hope to learn from your mentorship.

I have watched close family members struggle with severe mental health issues for most of my life—issues that law enforcement and the criminal justice system struggle to handle. I want to clerk for you to develop an understanding of how our communities can more effectively handle our most disadvantaged members. I have volunteered since college in diversion programs such as Public Counsel CARES, the ABA's Pro Bono Asylum Representation Project, and free tutoring centers during COVID remote schooling. As a current student in the Federal Criminal Justice Clinic, I have sought to improve our criminal justice system through writing memoranda on issues of compassionate release and habeas petitions, rewriting local pre-trial detention rules to better reflect the law, leading a data team and conducting research for the *Freedom Denied* Report, writing and editing template motions, and more. Clerking for you in the Eastern District of Virginia, with its uniquely expeditious "rocket docket," would be an invaluable opportunity to build on my experience with daily exposure to first-rate advocacy and legal analysis in both criminal and civil matters.

Other experiences in law school have similarly sharpened my legal writing and my analytical thinking. My Law Review comment addressed two circuit splits on adjacent issues of compassionate release. My proposed solution relied on the U.S. Sentencing Commission's recent policy statement and judicial retroactivity drawn from other areas of law, including habeas petitions and SEC adjudications. As a moot court board member, I reviewed briefs and oral arguments for pending Supreme Court cases, drafted bench memoranda, and created incisive questions on points of legal tension in those cases. My time with the U.S. Attorney's Office this past summer demonstrated to me the importance of humility in receiving and implementing critical feedback—hard work that culminated in the opportunity to draft an argumentative brief for the Ninth Circuit. Collectively, these experiences challenged me to engage in complex legal analyses, draw from authorities outside the judiciary, and apply first principles to complex issues.

Please find my resume, writing sample, references, and law transcript attached for your review. My letters of recommendation from Professor Alison Siegler, Professor Aneil Kovvali, and Professor Anthony Casey will arrive under separate cover. Thank you in advance for your consideration.

Sincerely,



Michael H. Jeung

Michael H. Jeung

438 Elder Dr., Claremont, CA 91711 | 909-776-5511 | mjeung@uchicago.edu

EDUCATION

The University of Chicago Law School — Chicago, IL
Juris Doctor Candidate — *June 2024*
- The University of Chicago Law Review, *Online Editor*
- Hinton Moot Court, *Board Member*
- Asian Pacific American Law Students Association (APALSA), *President*

University of Southern California — Los Angeles, CA
Bachelor of Arts in Political Science, *magna cum laude* — *May 2020*
- USC Moot Court Team, *Co-founder*
- USC Mock Trial Team, *Competitor*

WORK AND RESEARCH EXPERIENCE

Judge John Kronstadt, United States District Court, Central District of California — Los Angeles, CA
Judicial Extern — *July 2023*

Covington & Burling LLP — Los Angeles, CA
Summer Associate — *May 2023 – Present*
- Drafted memoranda on anti-SLAPP laws in state and federal court

Federal Criminal Justice Clinic, The University of Chicago Law School — Chicago, IL
Project Manager — *April 2021 – Present*
- Researched criminal procedure issues and drafted related memoranda for possible future impact litigation
- Managed a team of researchers in coding court watching notes and PACER filings for data analysis
- Edited speeches and presentations for nationwide trainings on proper pretrial practice, rewrote local rules on pretrial detention, and researched the legal implications of pretrial policy changes
- Created flowcharts to guide judges and defense counsel through initial appearances and detention hearings
- Wrote and edited template motions, incorporating Administrative Office H-Table data

Professor William Hubbard, The University of Chicago Law School — Chicago, IL
Research Assistant — *August 2022 – Present*
- Reviewed Professor Hubbard's Civil Procedure teacher's manual for both form and substance

United States Attorney's Office, Central District of California — Los Angeles, CA
Legal Extern — *June 2022 – August 2022*
- Wrote an answering brief to the Ninth Circuit on legal issues of clear error and reconsideration of precedent
- Updated the internal Fourth Amendment guide with case law on novel anticipatory search warrant issues
- Revised the internal jury trial handbook with recent Ninth Circuit case law
- Conducted legal research for motions to suppress
- Attended trainings on all phases of trial, including opening statements, direct and cross examinations, closing arguments, and objection arguments

VOLUNTEER WORK

Cardinal Education Free Tutoring Center, *COVID Tutor* — *July 2020 – March 2021*
Public Counsel CARES, *Volunteer* — *April 2018 – May 2020*
ABA's Pro Bono Asylum Representation Project, *Trial Assistant* — *March 2018 – July 2018*
Global Fund to Fight AIDS, Tuberculosis and Malaria, *Researcher* — *January 2017 – August 2017*

SKILLS AND INTERESTS

Languages: Intermediate Spanish, Rudimentary Korean
Hobbies: Running, muay thai, surfing, snowboarding, LA sports, perfecting recipes for Korean dishes, chess, theater

Michael H. Jeung

438 Elder Dr., Claremont, CA 91711 | 909-776-5511 | mjeung@uchicago.edu

Transcript Note

My father was diagnosed with stage III lung cancer two weeks before my 1L winter quarter final exams. He suffered a severe ischemic stroke less than a week later, resulting in a coma that persisted for several months. I spent this time flying between Chicago and Los Angeles to care for him and support my mother and brothers. My father passed shortly before my 1L spring quarter final exams. After his passing, I withdrew from my Critical Race Studies class after consulting the Dean of Students and my career advisors. I believe that my exam performance does not fully reflect my knowledge and capabilities. I can provide further information if needed. My grade in the Federal Criminal Justice Clinic will not be assigned until graduation, when my involvement in the clinic ends.

THE UNIVERSITY OF CHICAGO

Name: Michael H Jeung
Student ID: 12329263

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

University of Southern California
Los Angeles, California
Bachelor of Arts 2020

Beginning of Law School Record

Autumn 2021

Course		Description	Attempted	Earned	Grade
LAWS	30101	Elements of the Law William Baude	3	3	177
LAWS	30211	Civil Procedure Diane Wood	4	4	180
LAWS	30611	Torts Saul Levmore	4	4	180
LAWS	30711	Legal Research and Writing Aneil Kovvali	1	1	181

Winter 2022

Course		Description	Attempted	Earned	Grade
LAWS	30311	Criminal Law Jonathan Masur	4	4	173
LAWS	30411	Property Aziz Huq	4	4	175
LAWS	30511	Contracts Douglas Baird	4	4	174
LAWS	30711	Legal Research and Writing Aneil Kovvali	1	1	181

Spring 2022

Course		Description	Attempted	Earned	Grade
LAWS	30712	Legal Research, Writing, and Advocacy Aneil Kovvali	2	2	180
LAWS	30713	Transactional Lawyering David A Weisbach	3	3	175
LAWS	43220	Critical Race Studies William Hubbard	3	0	W
LAWS	44201	Legislation and Statutory Interpretation Farah Peterson	3	3	177
LAWS	47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	176

Autumn 2022

Course		Description	Attempted	Earned	Grade
LAWS	42301	Business Organizations Anthony Casey	3	3	179
LAWS	46501	Federal Criminal Law Sharon Fairley	3	3	179
LAWS	53445	Advanced Criminal Law: Evolving Doctrines in White Collar Litigation Thomas Kirsch	3	3	179
LAWS	90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	1	0	

Winter 2023

Course		Description	Attempted	Earned	Grade
LAWS	40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	174
LAWS	43234	Bankruptcy and Reorganization: The Federal Bankruptcy Code Anthony Casey	3	3	177
LAWS	46101	Administrative Law David A Strauss	3	3	174
LAWS	90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	2	0	
LAWS	94110	The University of Chicago Law Review Anthony Casey	2	2	P

Spring 2023

Course		Description	Attempted	Earned	Grade
LAWS	43201	Comparative Legal Institutions Thomas Ginsburg	3	3	178
LAWS	43212	Federal Habeas Corpus Taylor Meehan Adam Mortara	2	2	179
LAWS	47301	Criminal Procedure II: From Bail to Jail Alison Siegler	3	3	177
LAWS	90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	2	0	
LAWS	94110	The University of Chicago Law Review	1	1	P
Req Designation:		Meets Substantial Research Paper Requirement Anthony Casey			

End of University of Chicago Law School

Date Issued: 06/15/2023

THE UNIVERSITY OF CHICAGO

Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit http://csl.uchicago.edu/policies/disclosures.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

I	**Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
IP	**Pass** (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation.
NGR	**No Grade Reported:** No final grade submitted
P	**Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
Q	**Query:** No final grade submitted (College only)
R	**Registered:** Registered to audit the course
S	**Satisfactory**
U	**Unsatisfactory**
UW	**Unofficial Withdrawal**
W	**Withdrawal:** Does not affect GPA calculation
WP	**Withdrawal Passing:** Does not affect GPA calculation
WF	**Withdrawal Failing:** Does not affect GPA calculation
	Blank: If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

H	Honors Quality
P*	High Pass
P	Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: http://registrar.uchicago.edu.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled Pro Forma does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: http://registrar.uchicago.edu.

Revised 09/2016

Michael H. Jeung

438 Elder Dr., Claremont, CA 91711 | 909-776-5511 | mjeung@uchicago.edu

REFERENCES

The Honorable Thomas L. Kirsch II
Judge of the United States Court of Appeals for the Seventh Circuit

United States Court of Appeals for the Seventh Circuit
5400 Federal Plaza
Hammond, IN 46320
(219) 852-6670
Thomas_Kirsch@ca7.uscourts.gov
Recommendation on request, please call.

Professor Alison Siegler
Director at the Federal Criminal Justice Clinic, Law Professor

The University of Chicago Law School
1111 E. 60th Street
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(773) 702-9611
alisonsiegler@uchicago.edu

Professor Anthony Casey
Deputy Dean, Law Professor

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Professor Aneil Kovvali
1L Legal Research and Writing Professor, Bigelow Fellow

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Professor Anthony J. Casey
Deputy Dean, Donald M. Ephraim Professor of Law and Economics,
Faculty Director, The Center on Law and Finance
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ajcasey@uchicago.edu | 773-702-9578

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Michael Jeung for a clerkship in your chambers. Michael is a great student with the promise to be an accomplished lawyer.

Michael was a student in my Business Organizations class in the fall and my Bankruptcy class in the winter. His in-class participation in both classes was superb. He was eager about the reading and the topics and always willing to jump in to field a hard question. His comments in class demonstrated an unusually strong grasp of the difficult legal issues in the readings. There were no instances when Michael came to class unprepared.

Outside of class, Michael is equally impressive. I have spent many hours over coffee discussing complicated bankruptcy or corporate law issues with Michael. I find that I learn as much as he does from these discussions. He always brings a creative and fresh viewpoint to old problems. This skill will be a great asset to any chambers.

Michael's success in law school is even more impressive given some of the challenges he has faced over the last two years. Michael's father became suddenly ill and passed away during his first year of law school. As one can imagine, this was a great burden on Michael. Michael responded admirably providing support for his mother and family while continuing on with his law school studies. Not surprisingly, Michael's grades suffered mildly during that time, showing a higher variance in the Winter and Spring of his 1L year. I urge you to consider Michael's case more holistically focusing on what he was able to accomplish while dealing with these personal stresses and not his particular grades during those quarters. Michael loves the study of law, excels at it, and has a strong work ethic that is clear from his accomplishments to date.

I think he will be a great addition to your chambers. And I recommend him with high praise.

Very truly yours,
Anthony J. Casey

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

Edwin F. Mandel Legal Aid Clinic
6020 South University Avenue | Chicago, Illinois 60637
PHONE 773-834-1680 | FAX 773-702-2063
E-MAIL alisonsiegler@uchicago.edu
www.law.uchicago.edu

Alison Siegler
Clinical Professor of Law
Director, Federal Criminal Justice Clinic

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Recommendation for Michael Jeung

Dear Judge Walker:

I enthusiastically recommend Michael Jeung for a clerkship in your chambers. Over the course of the past two years, I have worked closely with Michael and have observed first-hand his legal acumen, diligence, strong legal writing and analysis, and commitment to his fellow Clinic students.

Immediately after being accepted to the Law School and visiting a class of mine as an admitted student, Michael proactively reached out and asked if he could contribute to my Clinic's work. At the time, my students and I were gathering empirical data on federal bail practices via court-watching. I was so impressed by Michael's initiative and motivation, as well as his genuine interest in contributing to our work, that I did something unusual—I brought Michael onto my Federal Bailwatching Project before he was even officially enrolled at the law school. Michael soon proved himself to be an invaluable member of the team and ultimately became a Project Manager, overseeing data collection for the first comprehensive national investigation of federal pretrial detention. Thanks in part to Michael's significant contributions, our Clinic recently issued a report entitled *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis*.

In the summer of 2021, Michael quickly took on a leadership role, although he was participating on an entirely pro-bono basis. Michael became a Project Manager and dedicated himself entirely to ensuring the project's success, devoting long days, nights, and weekends over what would otherwise have been his summer vacation before starting law school. During that summer, Michael trained a group of undergraduate interns to use PACER and input case data into our spreadsheets to augment the data we had gathered through court-watching. Because much of this stage of the project was new, Michael and I worked closely together in crafting the protocols for this process. He then supervised the interns as they scoured PACER to gather and code data into our spreadsheets from the docket sheet, complaint, indictment, case summary, and detention/release order in each of the observed cases. In his role as Project Manager, Michael also demonstrated organizational skills,

keeping minutes in team meetings and organizing our discussions into future tasks to follow up on. Michael was responsive to feedback and quickly committed himself to improving in the face of any critique, a rare trait.

During this time, Michael also showed that he had the makings of a strong leader. When the interns he was supervising performed well, he acknowledged their successes; when their work fell short, he provided constructive and compassionate critiques, addressing shortcomings as they arose to ensure that everything continued to run smoothly.

Michael continued to provide pro bono assistance to the Clinic during his 1L year. During that same time, Michael suffered a serious loss—his father fell into a coma in the winter quarter and passed away at a young age in the spring. Michael came back to work with the Clinic shortly after this sudden tragedy, taking on an editorial role with our Freedom Denied Report. Michael has confided in me that his grades dipped significantly during this time because of the demands of flying back home every other week to visit his father and take care of his family. Despite these trying circumstances, Michael earned a position on the Law Review. Michael has also continued to remain engaged with the broader Law School community, earning positions as an Online Editor on the Law Review's executive board, as a board member for the Hinton Moot Court, and as President of the Asian Pacific American Law Students Association.

Over the course of the past academic year, Michael has continued to perform excellent work in the Clinic, demonstrating attention to detail and efficiency across many demanding assignments. I tasked Michael with writing a research memo examining a tricky legal issue—whether the mootness doctrine would effectively bar litigation challenging an aspect of the bail process. Michael demonstrated strong legal research and analysis skills in the memo. The subject matter was complex, requiring Michael to parse case law in many jurisdictions that could serve as potential venues for future impact litigation. In addition, Michael updated and wrote parts of several motions for federal pretrial release. He also helped rewrite a proposed Local Rule for one federal district court.

Michael's most recent project involved preparing for and giving an oral presentation to Senator Durbin about our Report's findings. I was very impressed by Michael's oral advocacy skills. During the course of Michael's presentation, the Senator asked him an important question about the data he was presenting regarding federal magistrate judges' failure to follow the letter of the Bail Reform Act during initial appearance hearings. Michael gave a terrific off-the-cuff response that not only answered the Senator's question but also conveyed an additional nuance of our findings.

Michael's clinic work has also included less traditional assignments that have enabled him to hone various skills and competencies that will serve him well as a law clerk and lawyer. For example, Michael created large flowcharts to help guide federal judges and criminal defense attorneys through the complex maze of the Bail Reform Act, demonstrating mastery over the pretrial stages of the federal criminal process. Additionally, Michael has written and edited numerous speeches and PowerPoint presentations, including for several national federal judicial seminars hosted by the Federal Judicial Center. Michael incorporated new data from

our Report, drew on AO statistics, and created visual figures and slides with a thoughtful eye to how best to convey the material. For another project, Michael and another clinic student deftly drew on statistics to calculate the quantitative impacts of our team's work under numerous different hypothetical future conditions.

These assignments and many more expected a lot of Michael, and he consistently delivered top-notch work product. He did so efficiently, promptly responding to feedback and completing projects quickly under time pressure. Throughout his time in the Clinic, Michael has displayed an admirable ability to handle a large volume of work quickly and well.

Michael plans to use the valuable skills he has developed with the Clinic in a career in public service. Michael has been committed to public service since he reached out to me before his enrollment at the law school. After working at the U.S. Attorney's Office during his 1L summer, he is interested in practicing federal criminal law.

Beyond his work abilities, Michael is a unique and irreplaceable presence in the Clinic. He is very close friends with the other students and has a bright and cheerful presence. He is cooperative, respectful, and collaborative. He works very well with others and is a team-player of the highest order; Michael will readily dedicate more time to a task to take work off a team member's plate. Furthermore, Michael goes out of his way to praise his coworkers' accomplishments and acknowledge others for their valued contributions.

For all of these reasons, Michael will be a terrific law clerk and a great asset to your chambers. If you would like to discuss his qualifications and accomplishments further, please do not hesitate to contact me at (773) 909-2011 or alisonsiegler@uchicago.edu.

Sincerely,

Alison Siegler
Clinical Professor of Law
Director, Federal Criminal Justice Clinic

Aneil Kovvali
Associate Professor of Law
Indiana University Maurer School of Law
Baier Hall
211 S. Indiana Avenue
Bloomington, IN 47405
akovvali@iu.edu | *609-902-8571*

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Michael Jeung's application for a clerkship in your chambers.

Michael was a student in my 1L legal research and writing class at the University of Chicago Law School during the 2021 to 2022 academic year. I have a high regard for Michael's research, analysis, and writing abilities, which is reflected in his grade.

Apart from having a great intellectual toolkit, Michael also has the right temperament to contribute in chambers. Michael always asked thoughtful and useful questions in class and at office hours. Michael was also very interested in helping his fellow students. In class, we often broke up into small groups so that students could workshop their writing together.
Whenever I stopped to listen in on his group, I would overhear him offering helpful and generous comments to his peers. Strong students are often competitive or eager to monopolize classroom discussion. But Michael genuinely seemed to want to see the whole class improve.

I would also note that Michael overcame very challenging circumstances during his 1L year. During the spring term, Michael's father became ill and passed. This happened shortly before important deadlines in my class, and only a few weeks before finals in his other classes.

While it was obvious from interactions outside class that he was deeply hurt by these developments, his performance within class was remarkable. I graded his written work anonymously and found it to be very strong. He also delivered truly excellent oral arguments: he was well-versed in the facts and law, polished and professional in his presentation, and thoughtful in his responses to tough questions. If I knew nothing else about him or his circumstances, I would happily support his application just on the strength of his work. Knowing of his challenges gives me absolute confidence that he will deliver excellent work even under the toughest circumstances.

Thank you for your consideration. If there is any way that I can be helpful in your evaluation of Michael, please do not hesitate to let me know. I will be transitioning to the Indiana University Maurer School of Law, but can be reached via email at akovvali@iu.edu and on my mobile (609) 902-8571.

Sincerely,
Aneil Kovvali

Michael H. Jeung
438 Elder Dr., Claremont, CA 91711 | 909-776-5511 | mjeung@uchicago.edu

I prepared the attached writing sample for a work assignment at the United States Attorney's Office in Los Angeles this summer. I was tasked with drafting a Ninth Circuit brief on behalf of the government in response to defendant-appellant's challenge against the denial of his motion to suppress. I changed all names, locations, and other identifying information to fictional counterparts. I deleted sections that did not demonstrate my writing, such as the cover page, table of contents, certificate of compliance, statement of jurisdiction and timeliness, statement of related cases, and conclusion. I did not receive editing suggestions from any attorneys or coworkers.

INTRODUCTION

Defendant Jon Snow is a documented member of the Night's Watch gang with a history of firearm and drug possession. In January 2020, officers pulled over his Chevy Tahoe after they observed multiple, undisputed traffic violations. While the officers were waiting for Defendant to comply with their lawful commands to exit the car—which he initially refused—Defendant admitted that he had "dope" on him. The officers then conducted searches of Defendant's person and car that revealed over 40 grams of methamphetamine and a loaded firearm. Defendant argues that the district court erred in denying his motion to suppress this evidence. But the district court properly found that the officers acted reasonably in questioning Defendant and conducting the searches. And as Defendant concedes, most of his challenges are foreclosed by binding precedent. Accordingly, this Court should affirm the denial of the motion to suppress.

ISSUES PRESENTED

1. Whether the district court clearly erred in finding (1) that Officer Lannister's questioning was covered by a public safety concern, and (2) that Officer Baratheon had probable cause when methamphetamine was found in Defendant's right front pants pocket.
2. Whether, given those facts, the court properly denied Defendant's motion to suppress.

STATEMENT OF THE CASE

A. The Offense Conduct

The offense conduct occurred on the night of January 19, 2020. Westeros Police Department (WPD) Officers Lannister, Baratheon, and Stark were patrolling a "high crime area" that is known to be "frequented by the Night's Watch gang." (1-ER-17). The officers saw Defendant's Chevy Tahoe exit a parking lot and noticed that "its front passenger side window

was tinted in violation of [California Vehicle Code § 26708(d)]." *Id*. The officers also noticed that a tow hitch was obscuring the license plate, a violation of California Vehicle Code § 5201. (1-ER-220). The officers conducted a records check on the Tahoe which revealed that the vehicle belonged to Defendant, who the officers knew to be a Night's Watch gang member. (1-ER-221).

Officer Lannister has spent the last six to seven years "almost exclusively" working the Night's Watch gang, the "largest gang in Westeros consisting of about 700 to 800 members." (1-ER-219). As such, Officer Lannister is well acquainted with the Night's Watch gang's involvement in violent crimes and drug trade. (1-ER-219). The officers had previously encountered Defendant in the past and knew that he was a Night's Watch gang member. (1-ER-17). In 2017, Officer Lannister arrested Defendant for unlawfully possessing a firearm that was discovered in his waistband. *Id*. In 2019, Officers Lannister and Baratheon stopped Defendant's car and found methamphetamine in his possession. *Id*.

The officers initiated the traffic stop, with Officer Baratheon approaching Defendant's driver-side window and Officers Lannister and Stark approaching the passenger-side window. *Id*. The officers informed Defendant that he was pulled over for having tinted windows and ordered him to exit the vehicle. *Id*. Defendant initially refused. (1-ER-18). Officer Lannister greeted Defendant, "What's up, Jon? How's it going?" believing that his acquaintance with many of the Night's Watch gang members could get Defendant to cooperate. (1-ER-162; 1-ER-222). After Officer Lannister told Defendant that they were allowed to do the investigation outside of the vehicle because of their safety concerns, Defendant agreed to step out of the vehicle. (1-ER-222). At no time throughout the interaction did the officers threaten or intimidate Defendant.

Just before Defendant exited the vehicle, Officer Lannister asked whether Defendant had "something in the car." Defendant answered he did not. (1-ER-222). Officer Lannister asked,

"Do you have anything on you you're not supposed to have?" *Id*. Defendant then responded that he had "dope" on him. *Id*. This exchange occurred "less than a minute-and-a-half" into the traffic stop. *Id*. Officer Lannister then asked whether there was a weapon inside the car, to which Defendant replied there was not. *Id*.

After Defendant stepped out of the vehicle, Officer Baratheon conducted an initial pat-down search, which took about 30 seconds. (1-ER-223; 1-ER-228). Officer Baratheon then ordered Defendant to place his hands on the hood of the car. Officer Baratheon reported that he felt a "grainy, crunchy substance" in Defendant's right pants pocket that "[he] believed was methamphetamine based on [his] prior experience in recovering methamphetamine." (1-ER-228). Officer Baratheon "later confirmed [it was] methamphetamine." (1-ER-117).

Officer Baratheon then began searching Defendant's vehicle. Officer Lannister believed that the vehicle contained additional evidence of a drug crime, given Defendant's admission that he had illegal drugs and Officer Baratheon's reporting that he felt dope in Defendant's pocket. (1-ER-223). Officer Baratheon found a loaded Bersa S.A. Thunder .380 semiautomatic pistol behind the third-row seat of Defendant's vehicle. *Id.*

While Officer Baratheon was searching Defendant's vehicle, Officer Stark told Defendant to throw the dope on the hood of the police car. *Id*. Defendant removed four plastic baggies from his left shirt pocket and two plastic baggies from his right pants pocket. *Id*. Defendant confirmed that the baggies contained "crystal," which the officers understood to refer to methamphetamine. (1-ER-224). The officers also noted that the quantity of methamphetamine was "well above [what] a person would possess for personal use." (1-ER-252).

Officers Baratheon and Stark then handcuffed Defendant and placed him in the patrol car before transferring him to the WPD Men's Jail where he was booked. (1-ER-224). Officer Stark

reports that "[a Miranda warning] happened while in booking prior to being questioned," and no interrogation occurred before the Miranda waiver (1-ER-130). Defendant was charged in March of 2020 in a three-count indictment with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii), being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and possession of a firearm in relation to and in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). (1-ER-255–7).

B. The Motion to Suppress and the Suppression Hearing

On February 25, 2021, Defendant moved to suppress all evidence from the search and seizure, claiming that the officers' stop did not have the requisite reasonable suspicion, that the officers prolonged the stop beyond the purpose of the traffic stop, and that the officers' pat-down lacked reasonable suspicion to believe Defendant was armed and dangerous. (1-ER-238–41). Defendant also added that no consent was provided for the search of the vehicle. (1-ER-241).

The Government filed an opposition to Defendant's motion to suppress. A suppression hearing followed on March 25, 2021. At the suppression hearing, the Government and Defendant direct and cross examined the three officers, as well as admitted into evidence the officers' declarations, photographs of the vehicle, and photographs of the street where the traffic stop occurred. (1-ER-29). The officers were given an opportunity to expound on their declarations on direct-examination and Defendant cross-examined them on those facts. At the end of the suppression hearing, the court questioned each counsel on the issues they deemed probative before each side made their final remarks on their respective positions.

C. The Ruling on the Motion

The district court denied Defendant's motion to suppress. The court found that the officers had reasonable suspicion sufficient to initiate the traffic stop, that their request for

Defendant to exit the vehicle was constitutional, that the officers did not unlawfully prolong the stop by "attend[ing] to related safety concerns," that the pat-down of Defendant was justified by reasonable suspicion, and that the officers' had probable cause for the pat-down and arrest. (1-ER-19–24). The court also found that the officers did not need Defendant's consent to search the vehicle pursuant to *Arizona v. Gant*, 556 U.S. 332, 343 (2009). (1-ER-24).

The court began the order by asserting that *Maryland v. Wilson* permits officers to ask the driver to exit the vehicle during a traffic stop, due to the "inordinate risk confronting an officer as he approaches a person seated in an automobile." 519 U.S. 408 (1997); (1-ER-20).

The court then addressed Defendant's prolongation claim by citing *Rodriguez v. United States*: the Fourth Amendment tolerates certain unrelated investigations as long as they "do not measurably extend the duration of the stop," and that "[t]raffic stops are 'especially fraught with danger to police officers,' so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." 575 U.S. 348 (2015); (1-ER-21). The court justified the officers' questioning, noting that the "officers addressed safety concerns by asking [Defendant] whether he was in possession of anything 'he was not supposed to have,' including 'a weapon.'" (1-ER-21). The court found that Defendant admitting to possessing "dope" allowed the officers to extend the stop to investigate new evidence of wrongdoing. (1-ER-21). Important in the court's determination was that "only one minute passed from the time the officers reached Defendant's car to the time Defendant admitted to possessing 'dope,'" and any delay that lengthened the stop was caused by Defendant's refusal to comply with the officers' lawful requests to exit his vehicle. (1-ER-21). The court also noted an observation in *United States v. Gorman*, that "[t]he vast majority of roadside detentions last [] a few minutes." 859 F.3d 706 (9th Cir. 2017); (1-ER-21).

The court disagreed with Defendant's argument that the pat-down violated the Fourth Amendment. The court based its conclusion on the officers having both knowledge that Defendant was a gang member previously arrested with a firearm and knowledge that Defendant possessed drugs, making the presence of a weapon more likely. (1-ER-23). The court went on to say that the officers had probable cause to arrest Defendant and "search his person incident to that arrest" because Defendant's admission to possessing dope furnished probable cause of a drug offense under California Health and Safety Code § 11350. (1-ER-23–4).

Finally, the court asserted that Defendant's consent was not needed to search the vehicle because *Arizona v. Gant* allows a vehicle search when "it [is] reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (1-ER-25). The court found that the Defendant's admitting possession and the baggies of methamphetamine "well above the amount for personal use" were sufficient to allow a vehicle search. (1-ER-25).

D. Conviction and Sentence

After the district court denied his motion to suppress, Defendant plead guilty pursuant to a conditional plea agreement in which he reserved his right to appeal the denial of the motion to suppress. (1-ER-12–3). Defendant admitted to possessing methamphetamine with intent to distribute, being a felon in possession of a firearm and ammunition, and carrying a firearm during and in relation to a drug trafficking crime. (1-ER-13). The district court imposed a term of 120-months' imprisonment followed by a supervised release term of four years. Both terms were based on Defendant's guilty plea to Counts 1, 2, and 3 of the Indictment. (1-ER-4–5).

SUMMARY OF ARGUMENT

The district court committed no error in denying Defendant's motion to suppress. For the reasons explained below, this Court should reject both of his claims.

First, Officer Lannister did not prolong the traffic stop by asking Defendant if he was in possession of anything "he was not supposed to have." The district court correctly found that Officer Lannister asked this question to address safety concerns because he had previously arrested Defendant for concealing a gun while driving. Officer Lannister's question also did not actually extend the stop and was supported by reasonable suspicion.

Second, the officers had probable cause to arrest Defendant and conduct searches of both his person and his car. Officer Baratheon had probable cause when he felt methamphetamine in the Defendant's right front pants pocket. The district court correctly concluded that Defendant's admission that he had "dope" provided sufficient basis to conduct a search incident to arrest of his person—which Defendant does not challenge. The district court also correctly concluded that this admission and the baggies of methamphetamine provided a sufficient basis to search his car.

Finally, this court is bound by the precedent set forth in *United States v. Butler* and *United States v. Smith* and is not authorized to overrule them absent an en banc hearing. Defendant acknowledges the precedential authority of both cases and concedes that the law was applied correctly. Accordingly, this Court should affirm.

ARGUMENT

A. District Court's Factual Findings Were Not Clearly Erroneous

1. Standard of review

This court reviews "de novo the denial of a motion to suppress." *United States v. Crawford*, 372 F.3d 1048, 1053 (9th Cir. 2004) (en banc). This court also reviews for "clear error the factual findings underlying the denial of such a motion." *United States v. Bynum*, 362 F.3d 574, 578 (9th Cir. 2004). A factual finding is clearly erroneous only if it is illogical, implausible,

or without support in inferences that may be drawn from the record. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

This court's review of a district court's reasonable suspicion determination is "a peculiar sort of *de novo* review, slightly more circumscribed than usual." *United States v. Valdes-Vega*, 738 F.3d 1074, 1077 (9th Cir. 2013) (en banc) (quotation marks and citation omitted). This court applies clear error review to the district court's factual findings and must then give "due weight to inferences drawn from those facts by resident judges and law enforcement officers." *Id*. (quotation marks and citations omitted). In other words, this court "defer[s] to the inferences drawn by the district court and the officers on the scene, not just the district court's factual findings." *Id*. The court may affirm the denial of a motion to suppress on any ground fairly supported by the record. *United States v. Baron*, 860 F.2d 911, 917 (9th Cir. 1988).

2. District court's findings were logical and supported by the record

In his opening brief, Defendant alleges that two of the district court's factual findings were clearly erroneous. The two factual findings Defendant takes issue with are (1) that Officer Lannister's questioning was covered by a public safety concern, and (2) that Officer Baratheon had probable cause when methamphetamine was found in Defendant's right front pants pocket. For the first factual finding, the clear error that Defendant alleges is that the district court combined two of Officer Lannister's questions, which they insist were separate inquiries. (AOB-23). For the second factual finding, the clear error that Defendant alleges is that the officers' probable cause was flawed because "[t]he video does not show [Defendant] removing drugs from his right front pant pocket." (AOB-26). Both clear error arguments are without merit.

a. District court did not clearly err in finding a safety concern

Defendant asserts that the district court's safety concern determination was clearly erroneous yet fails to furnish his claim with evidence that the factual finding is "illogical, implausible, or without support in inferences that may be drawn from the record." *Hinkson*, 585 F.3d at 1262. The Ninth Circuit has established that it "defer[s] to the inferences drawn by the district court and the officers on the scene, not just the district court's factual findings." *Valdes-Vega*, 738 F.3d at 1077. The inferences and factual findings of the district court are devoid of any clear error and directly compatible with the Supreme Court's holding in *Rodriguez v. United States*. 575 U.S. 348, 354 (2015).

Officer Lannister's inquiry with Defendant was not "intended to elicit an incriminating admission," as Defendant claims. (AOB-21). The question Defendant chose to single out was also not Officer Lannister's first question to Defendant. The record is clear that Officer Lannister first asked Defendant how he was doing before explaining clearly to him that they were going to carry out their investigation outside of the vehicle because of their safety concerns. (1-ER-222). The officers "spent about one minute addressing safety concerns" to Defendant. (1-ER-268). This explanation, which preceded the question that Defendant is disputing, was the beginning of the officers' safety concern line of inquiry.

The district court couched its holding in *Rodriguez*, a case that Defendant heavily relied on during the suppression hearing. The Supreme Court noted that "[t]raffic stops are 'especially fraught with danger to police officers,' so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely," even if that means officers engage in "certain unrelated investigations," as long as "[those investigations] do not measurably extend the duration of the stop." *Rodriguez*, 575 U.S. at 354.

Officer Lannister's questions fall squarely within the constitutionally permissible zone drawn by the Supreme Court in *Rodriguez*. The officers' traffic stop with Defendant was "fraught with danger" in a way even greater than what the Supreme Court generalized. *Id.* All three officers were aware of Defendant's affiliation with the Night's Watch gang, a group that is heavily involved with violent crime and drug trade. (1-ER-219). Officers Lannister and Baratheon also had personal experience with Defendant, having arrested him once in 2017 when Defendant unlawfully possessed and concealed a firearm in his waistband while driving and again in 2019 when Defendant was carrying methamphetamine. (1-ER-17). As the district court concluded in its order, the combination of Defendant's gang affiliation, Defendant's prior history of concealing firearms, and the high-crime area in which the traffic stop was taking place elevated the safety concern during the exchange between the officers and Defendant. (1-ER-21).

Officer Lannister's questions were also "negligibly burdensome precautions" as envisioned by the Supreme Court in *Rodriguez*. 575 U.S. at 354. The record is clear that the back-and-forth lasted "less than a minute-and-a-half into the traffic stop," so we can be confident that the questions were minimally invasive. (1-ER-222). The Ninth Circuit in *United States v. Gorman* also acknowledged that "[t]he vast majority of roadside detentions last [] a few minutes," placing Officer Lannister's interaction with Defendant comfortably within the bounds of a lawful stop. 859 F.3d 706, 714 (9th Cir. 2017).

b. Officers' probable cause was not based upon clearly erroneous facts

Defendant also alleges that the officers' probable cause was clearly erroneous because "[t]he video does not show [Defendant] removing drugs from his right front pant pocket." Defendant goes as far to say that "Baratheon was wrong when he believed he felt drugs in [Defendant's] right front pant pocket." (AOB-25–6). This rendition of the facts is incomplete.

Prior to the pat-down, Defendant admitted to possessing "dope" on him, which the officers understood from their training and experience to refer to methamphetamine. (1-ER-228). The officers had previously found methamphetamine in Defendant's possession and knew that the Night's Watch gang "controls most of the [methamphetamine] trade in Westeros." (1-ER-24). During this pat-down, Officer Baratheon reported that "[he] felt a grainy, crunchy substance in [Defendant's] right pants pocket that [he] believed was methamphetamine based on [his] prior experience." (1-ER-228). The record is clear that Defendant was then ordered to remove the drugs from his person—he removed four plastic baggies of methamphetamine from his left shirt pocket and two plastic baggies of methamphetamine from his right front pants pocket. (1-ER-223; 1-ER-251). Immediately after removing the six baggies from his person, Defendant confirmed that the baggies contained "crystal," a clear reference to methamphetamine. (1-ER-224). The officers' sworn declarations furnish the factual findings necessary for probable cause, and the discrepancy Defendant alleges is insufficient to amount to clear error. *See Hinkson*, 585 F.3d at 1262.

Assuming *arguendo* that Defendant did not have two baggies of methamphetamine in his right front pants pocket, which we can be sure he did based on the officers' sworn declarations and evidence, it still would not be dispositive. "Probable cause to arrest exists when officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed…" *Garcia v. Cnty. Of Merced*, 639 F.3d 1206, 1209 (9th Cir. 2011) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). And in coming to this probable cause determination, officers "may draw on their experience and specialized training to make inferences." *Hart v. Parks*, 450 F.3d 1059, 1067 (9th Cir. 2006). Inferences that the Ninth Circuit has established are given "deference" on clear error review.

Valdes-Vega, 738 F.3d at 1077. When he felt the crunchy substance in Defendant's pocket, Officer Baratheon relied on his "experience and specialized training" to come to the determination that he was feeling methamphetamine, which he later confirmed. *Hart*, 450 F.3d at 1067. This inference came after Defendant had already admitted to possessing "dope," an admission which the Supreme Court has recognized as "carry[ing] [its] own indicia of credibility…sufficient at least to support a finding of probable cause to search." *United States v. Harris*, 403 U.S. 573, 583 (1971).

Given the evidence of possession and Defendant's two admissions to possessing methamphetamine, the officers had knowledge sufficient that Defendant was in violation of California Health and Safety Code § 11350. The officers had probable cause of this violation even before Officer Baratheon's pat-down based on Defendant's admission. *Id*. When Officer Baratheon felt the methamphetamine during his pat-down, that specialized inference only further substantiated his probable cause.

B. This Court is Bound by Circuit Precedent and En Banc Reconsideration of those Precedents is Unjustified

Defendant acknowledges the precedential authority of *United States v. Butler* and concedes that the district court correctly applied *Butler* to the facts of the case. 249 F.3d 1094, 1098 (9th Cir. 2001). (AOB-22). Defendant also concedes that *United States v. Smith* is similarly binding and was correctly applied to the facts of the case. 389 F.3d 944, 951 (9th Cir. 2004). (AOB-26). In contesting the district court's determinations rooted in *Butler* and *Smith*, Defendant is asking this court to do something it is not authorized to do. This court is bound by those precedents and cannot overrule them. *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (A circuit panel may disregard circuit precedent only when "the reasoning or theory of [the] prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher

authority."). Defendant does not cite any "intervening higher authority" to compel this circuit panel to disregard either case's precedential authority.

1. Butler should not be reconsidered en banc

Defendant argues that *Butler*, which was reasoned on *Berkemer v. McCarty*, should be reconsidered because it is normatively incorrect and that applying *Butler* to the facts of this case demonstrates that. 468 U.S. 420, 439 (1984). More specifically, Defendant argues that officers should be constitutionally required to issue Miranda warnings during traffic stops. *Miranda v. Arizona*, 384 U.S. 436 (1966). In support of this, Defendant argues that the two features of traffic stops that the *Berkemer* Court found to mitigate potential police coercion do not apply to the case at bar. Those two factors are: (1) detention during a traffic stop being presumptively temporary and brief, and (2) the circumstances during a traffic stop being such that the motorist does not feel completely at the mercy of the police. (AOB-24). Defendant argues that those two factors as applied lead to the conclusion that the traffic stop was coercive and that Miranda warnings were needed. However, the facts of the case clearly establish the opposite conclusion.

Contrary to Defendant's argument, the *Berkemer* Court's two factors cut in favor of the officers. The first *Berkemer* factor is that traffic stops are presumptively temporary and brief. Defendant's initial traffic stop before suspicion increased after his admission only lasted "less than a minute-and-a-half." (1-ER-222). The *Berkemer* Court notes that "[t]he vast majority of roadside detentions last [] a few minutes." *Berkemer*, 468 U.S. at 437. The duration of the officers' interaction with Defendant is comfortably within the limits the *Berkemer* Court envisioned when creating the first factor. The second *Berkemer* factor is that circumstances during a traffic stop are such that the motorist does not feel completely at the mercy of the police. In support of this, the *Berkemer* Court noted the public view of the stop. During

Defendant's cross-examination of Officer Lannister, Defendant asserted that "this part of Westeros…[is] a major thoroughfare of Westeros." (1-ER-38). Defendant further asserted that the street where the traffic stop occurred is "one of the main arteries in Westeros," is "a very busy street," and "isn't some remote part of town." (1-ER-38). All of this seems to suggest that the street where the traffic spot occurred is exactly the sort of "public view" envisioned by the *Berkemer* Court in creating the second factor.

Defendant applies the *Berkemer* factors in support of why *Miranda* should not apply to traffic stops. But applying the *Berkemer* factors here only demonstrates their rigor and accuracy. This, combined with the normatively desirable public policy justifications for not extending Miranda warnings to traffic stops, demonstrates why *Butler* was correct and should not be reconsidered en banc. *Miranda*, 384 U.S. at 486 ("Our decision is not intended to hamper the traditional function of police officers in investigating crime…").

2. Smith should not be reconsidered en banc

Defendant argues that *Smith* should be reconsidered because it is normatively incorrect, particularly that the doctrinal underpinnings of searches incident to arrest do not arise until the arrest is actually made. The two doctrinal underpinnings cited by Defendant are officer safety and the prevention of destruction or concealment of evidence. The case at bar demonstrates that this assertion is not categorically true, particularly in the case of the first doctrinal underpinning of officer safety.

As previously discussed, Defendant has a background in violence and drug trafficking. (1-ER-219). Defendant is affiliated with a dangerous gang, the traffic stop is occurring in that gang's area of operation, and Defendant has previously been arrested for unlawfully possessing a firearm that he had hidden in his waistband while driving. (1-ER-17). Furthermore, the officers

and Defendant have a track record of arrests, which Defendant is undoubtedly aware of. (1-ER-17). Given Defendant's background, the officers needed to ensure that he did not have access to a firearm or weapon during their encounter. In other words, their justification of officer safety was present prior to the arrest, because their encounter was with a repeat player with a known criminal background. The search incident to arrest justification of officer safety is grounded in the idea that arrestees may become more aggressive after being detained. *United States v. Johnson*, 913 F.3d 793, 804 (9th Cir. 2019), vacated, *Johnson v. United States*, 140 S.Ct. 440 (2019). The situation at bar disproves Defendant's argument against *Smith*. Encounters with repeat players who have been arrested in the past for concealing weapons, and thus may harbor preexisting aggression, may prompt search incident to arrest justifications before a specific arrest is effected.

Defendant cites Judge Watford's argument that *Smith* is unsound because it makes the legality of the search dependent upon events that occur after the search. (AOB-28). Judge Watford argues that incentivizing arrests to justify previous searches is a moral hazard. The case at hand again demonstrates that that assertion is not categorically true. The situation between Defendant and the officers had no risk of moral hazard because by the time the search was effected, the officers had sufficient probable cause to conduct a search, given Defendant's background and Defendant's admission to possessing "dope." (1-ER-24). There was no need to effect a later arrest to justify an earlier search as the justification existed prior to the search. The case at bar harbors none of the criticisms of *Smith*, as officer safety was at risk and moral hazard was nonexistent, and is thus unsuitable as a vehicle for reconsideration of the issues en banc.

Applicant Details

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Applicant Education

BA/BS From	**University of North Carolina-Chapel Hill**
Date of BA/BS	**May 2018**
JD/LLB From	**University of California, Berkeley School of Law** **https://www.law.berkeley.edu/careers/**
Date of JD/LLB	**May 12, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**California Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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March 23, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Jamar K. Walker:

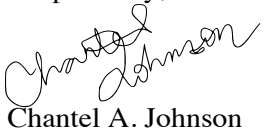
I am a third-year law student at the University of California, Berkeley, School of Law, and the Senior Development Editor of the *California Law Review*. I plan to begin my career as a litigation associate at Cooley LLP in San Francisco following graduation. I am writing to apply for a 2024-2025 term clerkship in your chambers or any subsequent term.

My experiences throughout law school reflect a desire and commitment to bettering myself—as a legal researcher, writer, teammate, and advocate. During law school, I have represented numerous clients and argued cases before judges and administrative boards in California as a court certified law student. In fact, I represented a client during the first semester of my 1L year. There, I was nervous but also excited and spent hours interviewing the client and preparing for oral argument. But perhaps nothing shows more growth than my most recent court appearance. I still spent hours preparing the case, but I knew all the contours of the opposing party's argument. I even successfully made court objections. I believe these experiences have prepared me to contribute meaningfully to your chambers as a judicial clerk.

Enclosed please find my resume, law school transcript, and writing sample. The writing sample is a brief from an advanced legal research and writing course that examines Title VII of the Civil Rights Act of 1964. Also enclosed are letters of recommendation from my Legal Research and Writing Professor Kerry Kumabe (kkumabe@law.berkeley.edu) and my clinic/externship supervisors Robin Packel (robin_packel@fd.org) and Maureen Kildee (mkildee@ebclc.org).

If there is any other information that may be helpful to you, please let me know. I can be reached by phone at 704.298.2818, or by email at chanteljohnson@berkeley.edu. Thank you very much for considering my application.

Respectfully,



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EDUCATION

University of California, Berkeley, School of Law, Berkeley, CA
J.D. Candidate, May 2023
Honors: Prosser Prize in Social Justice Issues in Entertainment & Media Law (second in class), Prosser Prize in Negotiations, California ChangeLawyers 1L Scholarship recipient, PracticePro Diversity Scholar
Activities: Police Review Project (Co-Leader), Admissions Ambassador, Law Students of African Descent (Membership Chair), First Generation Professionals, Womxn of Color Collective
Journals: *California Law Review*

University of North Carolina at Chapel Hill (UNC), Chapel Hill, NC
B.A. in Political Science, Minor in Philosophy, May 2018
Honors: Dean's List, Hayden B. Renwick Academic Achievement Award, Pi Sigma Alpha
Activities: NAACP, UNC Office for Diversity and Inclusion, Community Government

EXPERIENCE

City of Berkeley, Berkeley, CA February 2023—Present
Councilmember/Commissioner
Incoming commissioner for the city of Berkeley's Police Accountability Board; currently waiting to be officially appointed.

Berkeley Law Death Penalty Clinic, Berkeley, CA August 2022 – Present
Clinical Student
Conducts research regarding death qualification and juror biases on behalf of client on death row in Missouri.

Center on Race, Sexuality & Culture August 2022 – Present
Research Assistant for Professor Russell Robinson
Collects data regarding the intersection of race, technology, and dating apps via client interviews and statistical research.

Cooley LLP, San Francisco, CA May 2022 – July 2022
Summer Associate (Litigation Associate Offer Extended)
Analyzed caselaw and drafted memos concerning contractual disputes to assist attorneys in discovery, arbitrations, and upcoming depositions. Presented research findings to case team regarding ineffective counsel claims for habeas corpus petition. Researched and analyzed California Invasion of Privacy Act (CIPA) for class action and jurisdiction purposes.

Office of the Federal Public Defender – Northern District of California, Oakland, CA January 2022 – April 2022
Law Clerk
Participated in weekly strategy calls for appellate litigation. Reviewed and analyzed discovery documents, photos, and jail interviews to make recommendations based on findings. Collected data on sex crimes by district to assess global correlation between client/victim profiles, sexual deviances, and subsequent arrests. Drafted initial motions of suppress to government. Drafted reply brief to government surrounding Miranda rights and privacy violations.

East Bay Community Law Center, Berkeley, CA August 2021 – May 2022
Clinical Student, Clean Slate Clinic
Successfully litigated a §1203.3, two §1203.4s, and a §17(b) felony reduction in court as a certified law student. Analyzed client records and rap sheets to determine best penal code remedy. Interviewed and drafted documents for DSS clients to secure job approval. Communicated with clients weekly regarding case development.

Cooley LLP / Turo, San Francisco, CA May 2021 – August 2021
Law in Technology Diversity Fellow/Summer Associate
Prepared case summaries and memoranda for business litigation and regulatory matters. Participated in weekly strategy calls for Turo litigation. Researched and drafted memos to analyze viability of ACLU's fourth amendment claims against Louisiana police.

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Berkeley Law
University of California
Office of the Registrar

Chantel A Johnson
Student ID: 3035970014
Admit Term: 2020 Fall

Academic Program History
Major: Law (JD)

Awards

Prosser Prize 2021 Spr: Negotiations
Prosser Prize 2021 Fall: Soc Just Issues Ent&Media Law

2020 Fall

Course		Description	Units	Law Units	Grade
LAW	200F	Civil Procedure Amanda Tyler	5.0	5.0	P
LAW	201	Torts Talha Syed	4.0	4.0	P
LAW	202.1A	Legal Research and Writing Kerry Kumabe	3.0	3.0	CR
LAW	230	Criminal Law Khiara Bridges	4.0	4.0	P

	Units	Law Units
Term Totals	16.0	16.0
Cumulative Totals	16.0	16.0

2021 Spring

Course		Description	Units	Law Units	Grade
LAW	202.1B	Written and Oral Advocacy **Units Count Toward Experiential Requirement** Kerry Kumabe	2.0	2.0	P
LAW	202F	Contracts Prasad Krishnamurthy	4.0	4.0	P
LAW	220.6	Constitutional Law **Fulfills Constitutional Law Requirement** Kristen Holmquist	4.0	4.0	P
LAW	231.5	CA Prisons & Discret. Parole **Units Count Toward Experiential Requirement** Keith Wattley	1.0	1.0	CR
LAW	245	Negotiations **Units Count Toward Experiential Requirement** Jessica Notini	3.0	3.0	HH

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	30.0	30.0

2021 Fall

Course		Description	Units	Law Units	Grade
LAW	224.3	Soc Just Issues Ent&Media Law **Fulfills 1 of 2 Writing Requirements** Russell Robinson	3.0	3.0	HH
LAW	241	Evidence Rebecca Wexler	4.0	4.0	P
LAW	289	EBCLC Seminar Seema Patel	2.0	2.0	CR
LAW	295.1G	Calif Law Review Saira Mohamed	1.0	1.0	CR
LAW	295.5Z	EBCLC Clinic **Units Count Toward Experiential Requirement** Seema Patel	5.0	5.0	CR

	Units	Law Units
Term Totals	15.0	15.0
Cumulative Totals	45.0	45.0

2022 Spring

Course		Description	Units	Law Units	Grade
LAW	231	Crim Procedure-Investigations Orin Kerr	4.0	4.0	P
LAW	295.5Y	Advanced EBCLC Clinic **Units Count Toward Experiential Requirement** Seema Patel	2.0	2.0	CR
LAW	295.6B	Criminal Field Placement **Units Count Toward Experiential Requirement** Susan Schechter	5.0	5.0	CR
LAW	295C	Criminal Law Ethics Seminar **Fulfills Either Prof. Resp. or Experiential** Nisha Shah Joseph Breyer Susan Schechter	2.0	2.0	P

	Units	Law Units
Term Totals	13.0	13.0

Carol Rachwald, Registrar

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Berkeley Law
University of California
Office of the Registrar

Chantel A Johnson
Student ID: 3035970014
Admit Term: 2020 Fall

Cumulative Totals	58.0	58.0

2022 Fall

Course		Description	Units	Law Units	Grade
LAW	207.5	Advanced Legal Writing	3.0	3.0	
		Fulfills 1 of 2 Writing Requirements			
		Lindsay Saffouri			
LAW	222	Federal Courts	5.0	5.0	
		Amanda Tyler			
LAW	285.2D	Deth Penlt Cl Sem I	2.0	2.0	
		Ty Alper			
		Elisabeth Semel			
LAW	295.5D	Death Penalty Clinic	4.0	4.0	
		Units Count Toward Experiential Requirement			
		Ty Alper			
		Elisabeth Semel			
		Mridula Raman			

	Units	Law Units
Term Totals	0.0	0.0
Cumulative Totals	58.0	58.0

Carol Rachwald, Registrar

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Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	–	High Honors	CR	–	Credit
H	–	Honors	NP	–	Not Pass
P	–	Pass	I	–	Incomplete
PC	–	Pass Conditional or Substandard Pass (1997-98 to present)	IP	–	In Progress
NC	–	No Credit	NR	–	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: https://www.law.berkeley.edu/careers/for-employers/grading-policy/

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FEDERAL PUBLIC DEFENDER
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JODI LINKER
Federal Public Defender
ROBIN PACKEL
Assistant Federal Public Defender

Telephone: (510) 637-3500
Fax: (510) 637-3507

August 19, 2022

Your Honor:

I am happy to recommend Chantel Johnson for a position as your law clerk.

From the start, Chantel demonstrated her ability to get to the heart of new-to-her legal issues by quickly researching and drafting a memo about how other circuits apply the attenuation exception to the exclusionary rule. Chantel was taking Criminal Procedure as she was working with us, on mostly Fourth Amendment issues, but she put in the work so that a lack of prior knowledge was never an issue. She progressed from drafting this research memo on a narrow, well-defined Fourth Amendment question to taking the lead on a motion to suppress that raised multiple Fourth and Fifth amendment issues. She assessed the challenges and strengths of the various legal arguments and drafted the motion accordingly. Her analysis was clear and thoughtful.

In a motion for early termination of supervision, Chantel demonstrated her skills in connecting with a client and turning the facts she elicited into a compelling story of rehabilitation. Moreover, when she learned that our office did not have guidelines for people writing letters of support on behalf of our clients, she took the initiative to draft some. Our office adopted Chantel's guidelines for use in other cases.

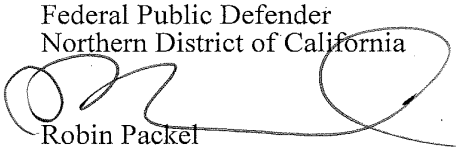
Chantel is a careful yet efficient researcher, and a concise writer who appreciated and incorporated feedback. She also is delightful to work with. She took an interest in all aspects of the office's work, came to our meetings well-prepared, never hesitated to ask when she had questions, and was very respectful of other people's time. Effective communication is one of Chantel's many strengths.

Chantel's diligence and her top-notch research and writing would serve your chambers well. I recommend her highly for a position as your law clerk.

Please feel free to contact me if I can provide any further information. Email is the best way to reach me: robin_packel@fd.org.

Sincerely,

Jodi Linker
Federal Public Defender
Northern District of California



Robin Packel
Assistant Federal Public Defender

December 13, 2022

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Chantel Johnson

Dear Judge Walker:

I write in enthusiastic support of Chantel Johnson's application to clerk in your chambers. I had the pleasure of teaching Chantel throughout her first year at Berkeley Law, initially in Legal Research and Writing (fall semester) and then in Written and Oral Advocacy (spring semester). In both classes Chantel demonstrated a powerful commitment to learning and produced thoughtful and professional work. I am confident that Chantel will excel as a law clerk and an attorney.

Chantel displayed a tremendous drive to learn. Although Chantel's entire first-year experience was remote due to the pandemic, she arrived at law school enthusiastic to acquire skill in legal analysis and writing. In the fall semester, when we focused on objective writing, Chantel took every opportunity to improve. The class was ungraded, but Chantel deeply engaged with each assignment and proactively sought feedback. Her final memo, which analyzed a discrimination claim under the Americans with Disabilities Act, was very strong. In my end-of-semester feedback, I commented that her analysis was "sophisticated and concrete." Overall, I was very impressed with her growth over the course of the semester.

In the spring, when we transitioned to the graded advocacy portion of the course, Chantel's final brief based on the Copyright Act was very persuasive. I assigned the students in Chantel's class to represent the fictional defendant, an artist who created large-scale geometric paintings shown at an art gallery in New York. Her opponent represented the plaintiff, an origami artist who claimed that the defendant unlawfully copied the lines of his origami crease patterns in her paintings. Chantel acknowledged that her client used the plaintiff's work as inspiration but argued that the fair use defense applied. I found her argument compelling. She showed great attention to the factual Record and a knack for persuasive yet pithy phrasing.

In oral argument, Chantel also displayed skill. She had the presence of mind, when questioned, to return to her central organizing theme throughout. This made her argument powerful and easy to understand. She also maintained her composure when asked tough questions. Although Chantel had to participate in oral argument over Zoom due to the pandemic, she was undaunted and able to rise to the occasion.

Chantel has told me that she loves legal research and writing, and it shows. For example, as the Senior Development Editor on the California Law Review, Chantel took on the monumental task of designing the legal writing problem used as part of the application process. Further, she continually seeks out opportunities to learn. Chantel received a passing grade in my course—the curve was unusually competitive that year and details such as Bluebooking ended up affecting her grade. Since then, she has been dedicated to refining her skills. She sought practical experience as a law clerk at the Federal Public Defender and at the East Bay Community Law Center. She also earned high honors and academic prizes in two other courses that required excellence in writing or oral communication.

Beyond the classroom, Chantel is an absolutely delightful person. Witty, warm, funny, thoughtful, generous, and kind, she is just a joy. In the five years that I have been on the Berkeley Law faculty, I count her as one of my favorite law students. Chantel is the first person in her family to graduate from both high school and college, and she has spoken to me about how the environment of a law school or a law firm initially felt disconcerting to her. Despite this, Chantel quickly learned to navigate these high-pressure environments with grace, while somehow finding the time to help others. When she worked as a summer associate at Cooley LLP, she went out of her way to assist her peers, even volunteering to take on the assignments of another summer associate who felt overwhelmed by the workload. Identifying her as a community leader, the Berkeley Law admissions committee asked her to become an ambassador. Chantel speaks to prospective first-generation professional law students about her experience. In doing so, she's become an inspiration for incoming and first-year law students.

I am confident that Chantel would be a wonderful addition to your chambers. She communicates clearly in writing and in person, and she's a joy to be around. I therefore recommend Chantel for a clerkship. Please do not hesitate to contact me at (510) 643-2739 or email me at kkumabe@law.berkeley.edu if I can provide any further information.

Sincerely,

Kerry S. Kumabe
Professor of Legal Writing
Legal Research, Analysis, and Writing Program
University of California, Berkeley School of Law

EAST BAY COMMUNITY LAW CENTER

September 1, 2022

To Whom It May Concern

Chantel is passionate and professional in the work she does, going the extra mile to connect with a client or finish a project. She was able to successfully engage a client with our services after we had tried and failed for more than two years. The client was mentally ill and repeatedly stopped communications when he became frustrated or confused. Chantel's gentle persistence and understanding accomplished what I could not - he agreed to have us represent him, and trusted Chantel so much that he allowed her to work with him on his letter to the judge.

Chantel represented another client in court. Again, her ability to connect with the client to draw out her story enabled Chantel to successfully argue to the judge why the client's circumstances and history merited granted her petition in the interest of justice. Her in-depth knowledge of the client's goals and needs enabled her to advocate strongly on the client's behalf.

In another case, Chantel performed a complicated review of a state licensing issue that involved both interpreting the relevant statutes and analyzing conflicting records from multiple government agencies. Chantel then assisted the client in writing her personal statement that was submitted to the state agency in support of her criminal record exemption request, assisted the client in gathering supplemental documentation in support of that request, and submitted the exemption request to the agency.

In addition to her client communications, legal analytical skills and courtroom advocacy, Chantel also worked tirelessly on our backlog of legal correspondence, and did hours of research that enabled us to update our website with accurate referrals for Clean Slate services throughout the state of California.

I give my full recommendation to Chantel, as I believe in her ability to be a great contributor to the role of a judicial clerk.

Best,

Maureen Kildee
Staff Attorney and Clinical Supervisor
Email: mkildee@ebclc.org

1950 University Avenue, Suite 200, Berkeley, CA 94704
t 510.548.4040 *f* 510.849.1536 www.ebclc.org

This brief is based on a hypothetical fact pattern from an advanced legal research and writing class. The research, analysis, and writing are substantially my own, including revisions based on comments provided by my professor.

TABLE OF CONTENTS

I. INTRODUCTION

The Navajo people have a right to reclaim their power. Power that has been stolen and wielded against them for hundreds of years. For many years, the Navajo people have been forced to choose: to choose between their native tongue or English; to choose between assimilation or punishment; to choose between life or death. But through the many threats and attacks on their person, there has been one shining light that is central to preserving their heritage and identity: the Navajo language.

The Equal Employment Opportunity Commission ("EEOC" or "Plaintiff"), on behalf of four Navajo employees – Suzanne Pierce, Loretta Nez, Freda Locklear, and Doris Begay (collectively the "Charging Parties") – brings a Title VII claim against Sean, Sarah, and Brett Miller ("the Millers" or "Defendants"), the owners of Burger Stop Drive In ("Burger Stop"). The Millers implemented a blanket English-only policy that prohibited Navajo employees from speaking in their native tongue, powerfully forcing Navajo employees to choose between their identity or financial security. Contrary to the Millers' alleged aims, the English-only policy does not alleviate employee turnover or feelings of alienation and inadequacy amongst employees; it only exacerbates them.

Defendants move for partial summary judgment on Plaintiff's disparate impact claim, alleging that the English-only policy was well-founded and does not disparately impact Navajo employees. But Defendants' assertions are misguided. First, the English-only policy has a significant adverse effect on the terms, conditions, and privileges of employment. Second, the Millers lack a legitimate business need for adopting the policy. Finally, there are other, less discriminatory practices that the Millers could adopt that would serve their business needs. Thus, Defendants' motion for partial summary judgment should be denied.

This Court has both a moral and legal obligation to not let history repeat itself, and to ensure that employers do not overstep the safeguards of Title VII. It is not enough to

just stand with Indigenous people; we must also believe them. The Court can do this by denying the Defendants' motion for partial summary judgment.

II. STATEMENT OF FACTS

Sean, Sarah, and Brett Miller own and operate Burger Stop, a fast-food restaurant located in Winslow, Arizona. Declaration of Sean Miller ("Miller Decl.") ¶¶ 1, 4. The small town of Winslow borders the Navajo Nation and over half of Burger Stop's customers and ninety percent of its employees are Navajo. *Id*. at ¶¶ 4, 5.

The Navajo Nation is home to more than 250,000 Navajos and covers more than 27,000 square miles. Declaration of Angela Diaz ("Diaz Decl.") ¶ 4. For over 80 years, Navajo children were "Americanized" and sent to government boarding schools, where "their hair was cut off, their names were changed, and their possessions were burned." *Id*. At these boarding schools, Navajo children were taught English and prohibited from speaking Navajo. *Id*. Children who disobeyed "were beaten and forced to eat lye soap." *Id*. Given this cultural genocide, the "Navajo language is central to the cultural heritage and identity of the Navajo Nation." *Id*. To preserve the Navajo culture and history, the Navajo Nation encourages its members to speak Navajo. *Id*.

In August 2021, the Millers posted a sign in the restaurant, kitchen, and break room that read "Please, No Navajo." Miller Decl. ¶ 7. In September and October 2021, Burger Stop began to lose employees. Deposition of Sean Miller ("Miller Dep.") 11:5-10. In October 2021, Lily Hunt, a Navajo employee, experienced sexual harassment from two male Navajo employees but did not alert the Millers of the problem until late November 2021. Deposition of Lily Hunt ("Hunt Dep.") 3:03-15. In January 2022, months after the harassment reportedly stopped, the Millers implemented an English-only policy. *See* Hunt Dep. 3:23-25; Miller Decl. ¶ 13. The English-only policy read:

> The owner of this business can speak and understand only English. While the owner is paying you as an employee, you are required to use English at all times. The only exception is when the customer cannot understand

> English. If you feel unable to comply with this requirement, you may find another job.

Out of 19 employees, 15 employees signed the policy. Miller Decl. ¶ 14. The written policy does not provide an exception permitting employees to speak non-English during break periods. Miller Decl. ¶14; Declaration of Suzanne Pierce ("Pierce Decl.") ¶ 5. While the Millers orally explained that the policy would not be enforced during breaks, this was never codified or written into the policy. *See* Miller Decl. ¶ 14. Sean Miller told the employees that even unintentional slips into Navajo would violate the policy, and those who violated the policy would no longer receive their shift preferences. *Id*. But "code switching," or the "unconscious switching between languages" cannot be "turned off" and is more likely to occur "when speaking informally with members of the same cultural group." Diaz Decl. ¶7(b). "What takes [a Navajo employee] once to explain in Navajo can take two or three times as long as in English." Pierce Decl. ¶ 6. The written policy does not apply to the Millers, who regularly speak Polish in the restaurant with relatives and each other. Miller Dep. 10:05-12; Pierce Decl. ¶ 8. The Millers have also treated violations of the English-only policy differently amongst employees. The Millers terminated four employees who refused to sign the English-only policy, but gave another employee, Bill Redstone, a notation in his file for violating the policy. *See* Miller Decl. ¶¶ 15, 16. Mr. Redstone called out in Navajo to a group of customers to warn them about a wet floor. *Id*. at 16. He was soon publicly confronted by Sarah Miller and reprimanded accordingly. *Id*.

Burger Stop is open seven days a week from 11am to 11pm, but the Millers are collectively on site for roughly 20 hours a week. *See* Miller Dep. 9:7-24. Three Navajo shift managers, who all speak Navajo, primarily manage the restaurant. *See id*. 9:18-23. While all the employees at Burger Stop speak English, the Millers hired the bilingual employees in part due to their ability to speak Navajo. *See* Pierce Decl. ¶ 8. Suzanne Pierce indicated that she felt exploited by the English-only policy since it did not apply to

the Millers, and since Navajo was only permitted when it was convenient for them. *See id*.

Employee turnover at Burger Stop is not new. The Millers have owned and operated Burger Stop for more than 25 years and have continuously employed at least fifteen individuals. Miller Decl. ¶ ¶ 1-2. The Millers have hired hundreds of Navajo employees within this timeframe. *Id*. at ¶ 5. Several other fast-food businesses operate in the vicinity of Burger Stop including Taco Bell, McDonald's, and Kentucky Fried Chicken. Pierce Decl. ¶ 9. None of these competing businesses have English-only policies or have reported any problems caused by the use of Navajo. *Id*. The Millers have failed to replace the employees who left and have acknowledged that business has not improved since implementing the English-only policy. Miller Dep. 12:15-16.

III. ARGUMENT

A. Summary Judgment Standard

A court shall grant summary judgment only if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the burden of proof of establishing the absence of a genuine issue of material fact. *Celotex Corp v. Catrett*, 477 U.S. 317, 323 (1986). Only if the moving party satisfies its initial burden does the non-moving party have to present facts showing that there is a genuine issue for trial. *Id*. at 324. All facts and inferences must be construed in favor of the non-moving party. *Id*. at 325.

B. The Court should deny summary judgment because there is a genuine dispute of material fact as to whether Defendants' English-only policy violates Title VII of the Civil Rights Act.

An employer is in violation of Title VII of the Civil Rights Act of 1964 if it discriminates against an individual regarding her "compensation, terms, conditions, or

privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000. Congress intended to "achieve equality of employment opportunities and remove barriers that existed to favor an identifiable group of white employees over other employees." *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S. Ct. 849 (1971). A plaintiff alleging discrimination under Title VII may do so under two theories of liability – disparate treatment or disparate impact. *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1484 (9th Cir. 1993). "Impact analysis is designed to implement Congressional concern with 'the consequences of employment practices, not simply the motivation.'" *Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1424 (9th Cir. 1990).

Courts assess disparate impact claims by using a three-step burden-shifting framework. *Contreras v. City of L.A.*, 656 F.2d 1267, 1271 (9th Cir. 1981). The plaintiff "must identify a specific, seemingly neutral practice or policy that has a significantly adverse impact on persons of a protected class." *Spun Steak Co.*, 998 F.2d at 1486. Once the plaintiff establishes a prima facie class, the employer must prove that the practice in question is job related for the position and consistent with business necessity. *Id.* Only if the employer provides an acceptable business justification does the burden shift to the plaintiff to prove that a less discriminatory alternative exists to accomplish the employer's business goals. *Contreras*, 656 F.2d at 1275.

Here, the Court should deny Defendants' motion for summary judgment because Plaintiff defeats summary judgment at each phase of the burden-shifting scheme. First, there is sufficient evidence by which a reasonable jury could find that the policy has created a hostile work environment. Second, Defendants have failed to meet their burden to show that the English-only policy is justified by any of the Millers' purported business needs. Finally, a reasonable juror could find several less discriminatory alternative policies that exist which can serve the same purpose.

1. Plaintiff establishes a prima facie case because the English-only policy significantly impacts the terms, conditions, and privileges of employment for Navajo employees.

A plaintiff can establish a prima facie case by showing that an English-only policy disproportionately effects the "terms, conditions, or privileges" of employment of a protected group. *Spun Steak Co*., 998 F.2d at 1486. Here, a reasonable factfinder could conclude that the English-only policy has a significant adverse effect on the privilege of conversing on the job and has fostered a hostile work environment for Navajo employees. *See id*. at 1489.

a. A reasonable juror could find that the English-only policy adversely impacts the privilege of speaking because the Millers punish minor slips of the tongue.

Regarding English-only policies, there is no disparate impact "if the rule is one that the affected employee can readily observe and nonobservance is a matter of individual preference." *Spun Steak*, 998 F.2d at 1487. But an English-only policy impacts the privilege of speaking when the employer imposes penalties for minor slips of the tongue. *Id*. Further, whether an employee can comply with an English-only policy is a question of fact. *Id*. at 1488.

In *Spun Steak*, the Ninth Circuit held that the English-only policy did not have an adverse effect on the privilege of speaking on the job because the employees were bilingual and could readily comply with the policy. *Id*. at 1487. The plaintiffs were production line workers. *Id*. at 1483. The court noted that the ability to converse and make small talk – especially in an assembly line job – was a privilege of employment. *Id*. Because the plaintiffs were able to speak English, the court reasoned that they were not limited or denied the employment of speaking. *Id*. In addition, the policy did not impose penalties for inadvertent slips into Spanish. *Id*.

Conversely, the Northern District of Texas found an English-only policy that always prohibited the speaking of a language other than English in the workplace,

except when speaking to a non-English customer, was in violation of Title VII. *E.E.O.C. v. Premier Operator Servs,* Inc., 113 F.Supp.2d 1066, 1073 (N.D. Tex. 2000). There, the recruitment and hiring of the bilingual employees (who were phone operators) nearly depended upon their ability to speak Spanish and service Spanish-speaking customers. *Id.* at 1068. Soon after hire, the employer enacted a blanket English-only policy that prohibited Spanish, including during lunch and in the employee break room. *Id.* at 1069. Employees who signed the English-only memo under protest or expressed their opposition to the policy were soon terminated without notice. *Id.* The court relied on an expert who testified that adhering to an English-only policy could be "virtually impossible" in many cases due to the nature of code-switching, or the constant switch between languages. *Id.* at 1070. The employees were prone to code-switching because they spoke Spanish to customers. *Id.*

Here, the English-only policy infringes upon the privilege of speaking for Navajo employees for several reasons. First, the Navajo employees are unable to readily comply. Unlike the employees in *Spun Steak* who primarily worked individually as production line workers, the Navajo employees must communicate daily with Navajo customers and employees. Pierce Decl. ¶ 5. This is much like the employees in *Premier*, who communicated daily with Spanish speaking customers and employees. Code-switching between English and Navajo makes it more likely for Navajo employees to speak Navajo accidentally and ultimately violate the English-only policy. *See Premier*, 113 F.Supp.2d at 1070; Diaz Decl. ¶ 7(b). The risk is especially great considering at least half of Burger Stop's customers and 90 percent of its' employees speak Navajo. Miller Decl. ¶5. Speaking Navajo will be inevitable for Navajo employees due to the unconscious nature of code-switching. *See Premier*, 113 F.Supp.2d at 1070 ("such as when an employee speaks to a co-worker immediately following a conversation in Navajo with a Navajo speaking

customer"); Diaz Decl. ¶ 7(b). The question of compliance should go to the jury since it is a factual question. *Spun Steak Co*., 998 F.2d at 1488.

Second, the English-only policy subjects the Navajo employees to severe punishment for violating the policy. Sean Miller stated that employees who repeatedly violated the English-only policy – even inadvertent slips into Navajo – would no longer receive their shift preferences. Miller Decl. ¶ 14. The Millers made good on this promise when they reprimanded Bill Redstone. *Id*. Mr. Redstone called out in Navajo to warn a group of customers about a wet floor. *Id*. He was publicly confronted by Sarah Miller and subsequently reprimanded. *Id*. This is in direct contrast to the employees in *Spun Steak*, who faced no punishment for violating the English-only policy. *Spun Steak*, 998 F.2d at 1484. The Millers' punitive actions are most like *Premier*, where the employer disciplined and terminated Hispanic employees who opposed its English-only policy. *See Premier*, 113 F.Supp.2d at 1071. Accordingly, a reasonable juror could find that the English-only policy infringes upon the privilege of speaking.[1]

b. The English-only policy fosters a hostile work environment for Navajo speakers because it is strictly enforced and increases feelings of exploitation and tension amongst Navajo employees.

An English-only policy can create a hostile work environment when it exacerbates existing tensions, is combined with other discriminatory behavior, or is enforced in a draconian manner in such a way that it amounts to harassment. *Spun Steak*, 998 F.2d at 1488-89.

[1] This distinguishes our case from the "ability to comply" cases mentioned by Defendants. Defendants' Motion for Partial Summary Judgment 8. None of these cases involved policies that punished inadvertent slips of the tongue. *See Kania v. Archdiocese of Philadelphia*, 14 F.Supp.2d 730, 734-35 (E.D. Pa. 1998): *Long v. First Union Corp. of Virginia*, 894 F.Supp.933, 941 (E.D. Va. 1995); *Gonzalez v. Salvation Army*, 1991 U.S. Dist. LEXIS 21692, at *7 (M.D. Fla. June 3, 1991).

In *Spun Steak*, the Ninth Circuit held that the employer's English-only policy did not create a hostile work environment given the circumstances. *Id*. at 1489. In addition to conclusory statements, the plaintiffs presented no evidence that the policy contributed to "an atmosphere of isolation, inferiority, or intimidation." *Id*. The bilingual employees were also able to comply with the rule. *Id*. There was substantial evidence to support that the employer enacted the English-only policy to curb Spanish-speaking employees from isolating and intimidating other workers. *Id*.

Conversely, in *Maldonado*, the Tenth Circuit held that an employer's English-only policy created a hostile environment because it "burdened, threatened, and demeaned plaintiffs." *Maldonado v. City of Altus*, 433 F.3d 1294, 1301 (10th Cir. 2006). For example, the English-only policy even extended to private telephone conversations. *Id*. at 1305. There was also evidence that the policy resulted in ethnic taunting, and employees testified that the policy made them feel like second-class citizens. *Id*. at 1301. The mayor even publicly referred to the Spanish language as "garbage." *Id*.

Similarly, in *Premier*, the court held that a blanket English-only policy fostered a hostile and tense working environment. *Premier*, 113 F.Supp.2d at 1073. The policy prohibited Spanish, even in break rooms, and ultimately fostered feelings of alienation amongst Spanish-speaking employees. *Id*. There was testimony that the company president directed ethnic slurs to Spanish-speaking employees, which further exacerbated workplace tension. *Id*. at 1071.

Here, Burger Stop's English-only policy created a hostile work environment. First, the policy exacerbated existing tensions. *Spun Steak Co*., 998 F.2d at 1489. Defendants conveniently ignore the context and history in which they imposed the policy. Burger Stop, located in the small town of Winslow in Arizona, borders the Navajo Nation. Miller Decl. ¶ 4. The Navajo Nation supports 250,000 Navajos. Diaz Decl. ¶ 4. For over 80 years, Navajo Nation children were subject to assimilation, and "were taught English and

forbidden to speak Navajo." Diaz Decl. ¶ 4. Thus, when Burger Stop hangs a "Please, No Navajo" sign or implements an English-only policy, these are reminiscent of what the Navajo Nation experienced years ago. A reasonable juror could find that Defendants' actions exacerbate tensions in an already tense environment.

Second, the policy is combined with other discriminatory behavior. Reports of harassment by Navajo employees did not begin until October 2021 and was not brought to the Millers' attention until late November 2021. Hunt Dep. 3:12-15. Lily Hunt asserts that the sexual harassment stopped once Sean Miller talked to the Navajo employees. *Id*. at 3:23-25. Still, the Millers implemented the English-only policy months later in January 2022. Declaration of Yolanda Tsosie ("Tsosie Decl.") ¶ 4. While the Millers encouraged employees to speak English exclusively, Sarah and Brett Miller continued to speak Polish in the restaurant with relatives and each other. Miller Dep. 10:05-12; Pierce Decl. ¶ 8. Unlike *Spun Steak*, where the employer enacted an English-only policy to curb harassment, it is unclear why the Millers enacted such a policy months after the harassment reportedly stopped. *See* Hunt Dep. 3:23-25.

Finally, the English-only policy is enforced in a draconian manner. *Spun Steak Co*., 998 F.2d at 1489. Burger Stop terminated four employees after they refused to sign the policy. Miller Decl. ¶ 15. And just weeks after the policy was implemented, they publicly reprimanded another employee for an unintentional slip into Navajo. Pierce Decl. ¶ 10; Miller Decl. ¶ 16. While Defendants assert that he was not punished for a slip, he received a note in his personnel file for said slip. Miller Decl. ¶ 16.

In sum, here, as in *Maldonado* and *Premier*, there is sufficient evidence that the Millers' English-only policy has led to a hostile work environment.

2. The Millers' lack a legitimate business need to justify the policy because there is no racial discord amongst employees and customers, and it does no more or less in helping them adequately supervise the workplace.

Once a plaintiff has proved his or her prima facie case of discriminatory impact,

the defendant bears the burden of justifying the business practice in terms of business need. Civil Rights Act of 1964, § 701 et seq. *See also Contreras*, 656 F.2d at 1275. "[E]ven a tailored English-only rule must be justified by business necessity, if there is one that could conceivably exist." *Premier*, 113 F.Supp.2d at 1073. To satisfy the business necessity burden, a defendant's justification must be "sufficiently compelling to override the discriminatory impact created by the challenged rule" and "must effectively carry out the business purpose it is alleged to serve." *Gutierrez v. Municipal Court of Southeast Judicial Dist., Los.*, 838 F.2d 1031, 1041 (1988).[2]

The Millers implemented the English-only policy with a total disregard of business need. The policy does not serve the Millers' business needs because there is no workplace discord to correct, customers were not offended by the use of the Navajo language, and it does no more or less in helping them supervise the workplace.

a. Defendants' policy is not necessary to promote workplace harmony because there was no prior workplace discord.

An English-only policy is justified in promoting workplace harmony only when there is sufficient evidence of employees using non-English to degrade or ridicule other employees. *Gutierrez*, 838 F.2d at 1042; *Long v. First Union Corp. of Virgina*, 894 F.Supp.933, 941 (E.D. Va. 1995); *Premier*, 113 F.Supp.2d at 1070.

In *Gutierrez*, the Ninth Circuit did not accept promoting harmony amongst employees as a sufficiently compelling business necessity. 838 F.2d at 1042-43. There, employees argued that a municipal court rule requiring all employees to speak English unless translating violated Title VII. *Id.* at 1036. The court noted that

[2] The plaintiff in this case quit her job before her employer's appeal reached the Supreme Court. Thus, the Court vacated the decision as moot. While this case lacks binding precedential value, it still represents the thinking of the court. It not only constituted a decision of a three-judge panel, but it survived an en banc call. It is also the only Ninth Circuit case to discuss business necessity in the context of an English-only rule. *See Garcia v. Spun Steak Co.*, 13 F.3d 296, 301 (1993).

the employer "failed to offer any evidence of the inappropriate use of Spanish." *Id*. at 1402. Moreover, the court found a lack of evidence supporting the employer's argument that employees used Spanish to mask ridicule of non-Spanish speaking employees. *Id*. Due to the lack of evidence, the court disregarded the employer's purported business justification. *Id*. at 1043; *Maldonado*, 433 F.3d at 1236-37 (declining to affirm summary judgment based on a business necessity because "[d]efendants' evidence … in this case is scant"); *Premier*, 113 F.Supp.2d at 1066, 1070 (the court did not find any evidence of workplace 'discord' … which required harmonization" through an English-only policy.").

Here, a reasonable jury could find that the English-only policy does not "effectively carry out the business purpose" of improving work conditions nor increasing employee recruitment and retention. *See Gutierrez*, 838 F.2d at 1039. In both *Gutierrez* and *Premier*, courts found that there was not enough evidence to prove that Spanish was causing workplace discord. *See Gutierrez*, 838 F.2d at 1042; *Premier*, 113 F.Supp.2d at 1070. Similarly, here, the Millers lack evidence to prove that the Navajo language caused discord. In fact, the discord was caused by sexual harassing comments, which were understood by employees and customers alike. *See* Miller Dep. 11:13-16. The Navajo language did not isolate anyone. Rather, the content of the conversations caused the discord. Therefore, Plaintiff casts doubt on Defendants' evidence of workplace disharmony caused by employees speaking Navajo and whether an English-only rule is the solution to mitigate the problem.

Instead of "promot[ing] 'harmony," a reasonable factfinder could find that the Millers' policy worsens work conditions by alienating Navajo employees. *See id*. The policy not only makes communication more difficult for Navajo employees but also makes them feel exploited because they are only permitted to speak in Navajo when it benefits the Millers financially. *See id*.; Pierce Decl. ¶8. Considering that the Millers have not been able to replace or rehire the four employees terminated for

refusing to sign the English-only policy, this policy creates a disruption in the workplace and adversely affects the recruitment and retention of Navajo employees. *See Premier*, 113 F.Supp.2d at 1070; Miller Dep. 12:5-12.

Defendants rely on *Long* and *Kania*, where the courts found meaningful evidence that the employees were using a non-English language to isolate and intimidate their co-workers. Defendants' Motion for Partial Summary Judgment ("Defs' MSJ") 13; *Kania*, 14 F.Supp.2d at 734-35; *Long*, 894 F.Supp. at 941. But here, the root of any discord was caused by the harassing comments and not the fact they were in Navajo. In fact, the English-only policy does nothing to prevent harassing comments in English.

b. The English-only policy is not necessary to make customers feel comfortable and welcome.

An English-only policy is a valid business defense only if an employer can prove that it is necessary to promote a polite and approachable environment for its customers. *E.E.O.C. v. Sephora USA*, LLC, 419 F.Supp.2d 408, 417 (S.D.N.Y. 2005); *Pacheco v. N.Y. Presbyterian Hosp.*, 593 F.Supp.2d 599, 621 (S.D.N.Y. 2009).

Defendants rely on two Southern District of New York cases to support their argument. Defs' MSJ 14. In *Sephora*, a court held that an English-only policy was justified by the need to enhance customer service because approachability was integral to the job of a sales employee. *Sephora*, 419 F.Supp.2d at 417. "[C]lient service [was] the core of Sephora's business[,] and the employer went so far as calling the employees "consultants[,]", the sales floor staff "the cast[,]", and the sales floor a "stage." *Id.* at 410. The court held that the English-only policy was consistent with the defendant's goal of creating a polite and approachable retail establishment. Similarly, in *Pacheco*, a district court in New York held that a hospital was justified in implementing an English-only policy because it helped the patients feel comfortable and assured that they were not being ridiculed in a foreign language. *Pacheco*, 593 F.Supp.2d 599 at 621.

Here, a jury could find that the English-only policy does not carry out its business aims of making customers feel comfortable. First, the customer's complaints focused on the use of profanity rather than the use of Navajo language. Miller Decl. ¶ 9. The customers had no problem understanding the profane comments that some employers made in Navajo, unlike the patients and customers in *Pacheco* and *Sephora* who did not understand the foreign language to begin with. *See Pacheco*, 593 F.Supp.2d at 615; *Sephora*, 419 F.Supp.2d at 416-17; Miller Decl. ¶ 9.

Second, over half of Burger Stop's customers are Navajo and speak Navajo fluently. Miller Decl. ¶ 5. Because the Navajo Nation encourages its members to speak Navajo to each other to preserve its culture and identity, the Millers wrongly assume that its customers who are predominately Navajo prefer to speak English while serviced. *See* Diaz Decl. ¶ 6. This is much different than the employees in *Pacheco* and *Sephora*, who did not service a large minority group who spoke a common language. *See Pacheco*, 593 F.Supp.2d at 614; *Sephora*, 419 F.Supp.2d at 416-17.

Third, the job responsibilities at a makeup retailer and a hospital are far more intentional than the job responsibilities at a mom-and-pop restaurant. Sephora described client service as the "core" of their success, while Sean Miller describes "making good food quickly" as the core to Burger Stop's success. *See Sephora*, 419 F.Supp.2d at 416; Miller Dep 12:19-23. Because different responsibilities exist between Burger Stop employees and the employees in *Sephora* and *Pacheco*, it makes sense that an English-only policy would be necessary in a retail store and hospital.

c. The English-only policy does not allow the Millers to adequately supervise the workplace.

An English-only policy is justified by the need to enhance supervision only if it allows a supervisor to more effectively evaluate or control the workplace. *Gutierrez*, 838 F.2d at 1043. When employers require employees to speak another language when

dealing with the non-English speaking public, an English-only policy does not enable or increase supervision if the supervisors are incapable of following the discussion. *Id*.

In *Gutierrez*, the Ninth Circuit court held that an English-only policy was not justified because the policy did no more or less in facilitating supervision. *Id*. There, bilingual deputy court clerks translated for the non-English speaking public, in addition to their other duties. *Id*. at 1036. The employer insisted on the English-only policy because several employees did not speak Spanish and could not discern whether information was correctly disseminated. *Id*. Given bilingual employees were hired for their ability to service the non-English speaking public, an English-only policy was futile because the supervisors were unable to follow the discussion. *Id*. at 1043. The best way to ensure that supervisors are kept abreast of the day-to-day productivity and communications of bilingual employees is to employ bilingual supervisors. *Id*. at 1043.

The Millers, who speak both English and Polish in the restaurant, do not have a business interest in making sure only English is spoken. *See* Miller Dep. 10:05-12; Pierce Decl. ¶ 8. First, as in *Gutierrez*, where the employer hired bilingual clerks in part to speak Spanish to Spanish-speaking customers, Burger Stop hired Navajo employees in part to speak Navajo to Navajo-speaking customers. *See* Pierce Decl. ¶ 8; *Gutierrez*, 838 F.2d at 1043. Because Burger Stop requires Navajo employees to speak Navajo to customers, the English-only policy does not help the Millers supervise since they do not understand the language, much like the supervisors in *Gutierrez*.

Second, because the Millers hired three shift managers that all identify as Navajo, this further eliminates the need for an English-only policy. *See* Miller Dep. 9:19-23; *Gutierrez*, 838 F.2d at 1043. This is only amplified by the fact that the Millers are rarely at the restaurant, at least in comparison to the three shift managers. *See* Miller Dep. 9:7-24. While Burger Stop is open seven days a week from 11am to 11pm, the Millers are collectively on site for a total of 20 hours a week. *See id*. At all other times, the three

Navajo shift managers run the restaurant. *Id*. at 9:19-20. Given this, the Millers can rely on the Navajo shift managers to keep them abreast of the day-to-day productivity and communications of Navajo employees.

Defendants rests their entire argument in this section on an unreported Florida district court case, *Gonzalez*, 1991 U.S. Dist. at *1-8. Defs' MSJ 15. There, a client complained about hearing a conversation in Spanish pertaining to condoms, and the court held that the English-only policy was necessary to monitor conversations. *Id*. at 2. The rule was narrowly tailored in *Gonzalez* but is not in our case. *Id*. In summary, Plaintiff can prove that the business defenses are not legitimate.

3. Plaintiff can establish a less discriminatory alternative that would equally serve the Millers' legitimate business goals.

Even if a factfinder finds a valid business necessity defense, a plaintiff may show that there is a less discriminatory alternative practice that could better meet the employer's needs. *Freyd v. University of Oregon*, 990 F.3d 1211, 1227 (9th Cir. 2021). The plaintiff must show that the alternative practice is equally as effective as the questionable, challenged practice. *Id*. at 1241.

In *Fitzpatrick v. City of Atlanta,* 2 F.3d 1112, 1122, (11th Cir. 1993*),* the court held that a plaintiff's suggested alternative failed because it did not equally serve the employer's business needs. The defendants proved that a no-beard rule for firefighters was warranted by business necessity. *Id*. at 1119-1120. Firefighters had to wear masks for safety reasons, and any facial hair would compromise their overall safety. *Id*. The plaintiffs could not prove that their proposed alternatives to the rule, which included partial shaving, would meet the department's safety needs and still allow firefighters to perform their essential job duties. *Id*. at 1122.

Unlike *Fitzpatrick*, alternatives exist that can effectively serve the Millers' business needs. First, the Millers could simply ban all offensive speech. *See* Pierce Decl. ¶ 8. Because all the Navajo shift managers can communicate in Navajo, they are

equipped to monitor communications effectively. Because the Millers are hardly on site, this will not be a difficult alternative to accommodate and will not pose a financial burden. Second, the Millers and the shift managers alike can also encourage employees to report anyone who uses offensive speech while working. *See* Pierce Decl. ¶ 8. This is again very cost effective and maintains the integrity of everyone's job responsibilities. Third, the Millers can narrowly tailor the English-only policy to employees who are making disparaging remarks. All alternatives equally serve the Millers' alleged goals of enhancing harmony, supervision, and customer service without unfairly punishing others.

IV. CONCLUSION

The Court must bear in mind the legal and moral obligations of upholding Title VII and reconciling the years of discrimination wielded against Indigenous people. The Court can stand with Navajo Nation and denounce a policy rooted in identity erasure. The English-only policy has a disparate impact on Navajo employees because the Millers punish accidental and inevitable slips of the tongue. The policy has also created a hostile work environment due to its draconian enforcement. The policy does not effectively serve the Millers' purported business needs because the Navajo language is not alienating to employees or customers, nor it does not allow them to better supervise the workplace. There are better, less discriminatory policies that the Millers could consider. Thus, the court should deny the Defendants' motion for summary judgment.

DATED: December 5, 2022

BY: _____

Attorney for Plaintiffs Suzanne Pierce, Loretta Nez, Freda Locklear, and Doris Begay

Applicant Details

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Date of JD/LLB	**May 10, 2024**
Class Rank	**50%**
Law Review/Journal	**Yes**
Journal(s)	**Journal of Corporate Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 3, 2023

The Honorable Jamar Walker
United States District Court, Eastern District of Virginia
Norfolk, VA 22314

Dear Judge Walker,

I am a second-year law school student at the University of Iowa College of Law, which is known nationally for its legal writing and research programs. As a contributing editor for the *Journal of Corporate Law* and the *Journal of Gender, Race and Justice*, I am highly motivated about pursuing a judicial clerkship in order to apply my legal research and writing skills on behalf of the judiciary. Virginia has always represented close family, because of my relationship with family that live in Centreville, VA. It has always held loving memories for me of good, respectful people and a mixture of big city life and small-town relationships. It is the perfect mixture of warm weather, delicious food and a prospering legal atmosphere. It is through my passion for legal research, writing and growth that I am incredibly interested in clerking for you. I am highly confident that my academic professional skills will lead me to be a fantastic law clerk.

As a second-year law student, I have been taking and enjoying a variety of legal analysis, writing and research classes. Beyond the black letter law classes, I have found a real passion for issues within Constitutional law as well as researching various topics. Additionally, my strength in legal writing and citation skills in *my Legal Analysis, Writing, and Research* ("LAWR") class continues to grow. I have developed strong Bluebook, Westlaw, and LexisNexis, skills and I am well versed with hardbound researching in a law library. Following my term as a student writer, I was promoted to be contributing editor for the *Journal of Corporate Law.* I was also selected to be a contributing editor for the *Journal of Gender, Race and Justice.* My contributing editor position with both journals will help me hone my blue booking and research skills. Additionally, as research assistant for the Dean of Academic Affairs Emily Hughes I am editing and updating her current *Professional Responsibility* textbook which shall be published in the spring. I have also conducted research and helping to draft the curriculum for her upcoming summer intercession course in France centering around comparative criminal procedure between France and the United States. I have truly enjoyed researching the differences between our judicial systems, which I never would have had the opportunity to do without the one-on-one assignments that was accomplished through my research assistant position. Because of my timely and thoroughness of tasks in adherence to deadlines, Dean Hughes has asked me to return for the following year. This semester, I have been fortunate to be a student representative for the Iowa Law faculty hiring committee, where my fellow students and I meet with prospective faculty to discuss student priorities and provide our feedback. Along, with the research assistant position, I am hoping to take classes such as *Judicial Opinion Drafting* and *Federal Courts* which will continue to build my knowledge of the judiciary. This upcoming summer my desire to learn more continues as I am enrolled in an *Advanced Legal Research and Writing* course that will examine the revolution in legal research from 1865 to present day. I am confident that my research and writing skills developed through my career will lead me to be a thorough and efficient law clerk.

Prior to law school, as an administrative assistant at Simmons Perrine Moyer Bergman PLC, I worked with attorneys in practice areas such as litigation, taxes, estate planning, and real estate law. At this firm, attorneys fostered opportunities to establish my legal research and writing skills that would later be built upon through courses and summer associateships. This experience truly shaped my foundation and invigorated my dream to attend law school. It gave me the foundational legal researching and writing skills that I built up as during my summer associate ship at the firm Himes, Petrarca and Fester CHTD. Last summer and this year will provide me with the necessary growth and opportunity to hone my research and writing skills to bring int your chambers upon graduation. My projects consisted of research in a variety of educational statutes and wrote memorandums concerning upcoming Illinois School Code legislation. As a summer associate, I honed my specialized writing skills in preparing for various hearings regarding special education programs and preparations for support staff negotiations for the upcoming contracts. I will be returning to Himes, Petrarca and Fester CHTD, where I will focus more on experiential elements.

Attached is my resume, a brief writing sample and law school transcripts. The letters of recommendation from Dean Emily Hughes, and Professor Caroline Sheerin are coming directly to you through your preferred application material method. I look forward to discussing the clerkship opportunity with you.

Respectfully,
Emma T. Johnson

Emma T. Johnson

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EDUCATION

The University of Iowa College of Law — Iowa City, Iowa
J. D. Anticipated — May 2024
GPA: 3.36

Honors: Dean's Award for Academic Excellence (highest grade) in *Legislation*
Activities: *Journal of Corporate Law,* Student Writer and Contributing Editor
Journal of Gender, Race and Justice, Contributing Editor
Associate Dean Emily Hughes, Research Assistant
Student Representative, Iowa Law Professor Hiring Committee
Iowa Student Bar Association, 2L Representative
Equal Justice Foundation, President
Peer Advisor, Iowa Law Career Services Office
Organization of Women Law Students and Staff, Member

The University of Iowa — Iowa City, Iowa
B.A, with Honors History and B.A. Criminology, *Graduate with Distinction* — May 2020
GPA: 3.87

Honors: Dean's List
Honors Thesis: "One Day There Will Be No Such Thing as Religious Intolerance": Anti-Catholicism During the Election of 1960
Activities: IES Rome Study Abroad Experience; Alpha Beta Chapter of Alpha Delta Pi , Chapter President; Alpha Phi Sigma, Treasurer

EXPERIENCE

House of Representatives Minority Committee on Education and Workforce — Washington, D.C.
Fall Law Clerk — Upcoming August 2023 – December 2023
- Researching various laws across states, formed educational policy outlines
- Writing a variety of case summaries, memorandums of assignments, attend meetings and research

Himes Petrarca & Fester CHTD — Chicago, Illinois
Summer Law Clerk — May 2022 – August 2022
- Researching various statutes across states, formed educational policy outlines — Upcoming: May 2023
- Writing a variety of case summaries, memorandums of assignments and research

Simmons Perrine Moyer Bergman PLC — Cedar Rapids, Iowa
Administrative Assistant — October 2020 – July 2021
- Assisted in overflow projects for various attorneys in the assistance of document collection
- Organized mail and documents, forwarding on to attorneys who work from home

Saddleback Ridge Golf Course — Solon, Iowa
Bartender and Starter — August 2017 – August 2020
- Checked in golfers, maintain on book scheduling, reservations for tee times, field calls for service
- Serve drinks, food, and necessities on the course, on staff service for outings and leagues

The University of Iowa Department of Criminology, Law and Justice — Iowa City, Iowa
Undergraduate Teaching Assistant — January 2020 – May 2020
- Collected student attendance activities and input data into spreadsheet to maintain attendance grade
- Created testing questions for online activities, format instructions for assignments and proofread exams

McHenry County State's Attorney Office — Woodstock, Illinois
Undergraduate Research Intern — May 2018 – August 2018
- Assisted the criminal and civil division with various casework (crime scene photos, interview transcriptions).
- Aided the civil division with various casework (FOIA request fulfillment, organization of case files)

THE UNIVERSITY OF IOWA

STUDENT GRADE REPORT

Name:	Emma Tanner Johnson
University ID:	01192670
Month/Date of Birth:	01/06
Date Generated:	06/05/23 07:08 PM

University of Iowa Degree(s):
Bachelor of Arts Conferred May 15, 2020
With University Honors and With Distinction
Major in Criminology, Law and Justice
Major in History
Honors in History

Attempted Transfer Work:

Course Title	Hrs	Grade
Spring 2019 / Institute for the International Education of Students Rome		
ADVENT OF CHRISTIANITY	3.0 SH	A
ITALIAN FASCISM	3.0 SH	A
ITALIAN LANG:NOVICE ABRD I	4.0 SH	A
CONTMP ROMAN CATHOLIC ISSUES	3.0 SH	A
MACHIAVELLI & PHIL OF POWER	3.0 SH	A-

Previous/Transfer institution(s) summary:
Institute for the International Education of Students Rome, Rome, ITALY 16.00 SH

Credit By Exam Summary:
AP US History 3.0
AP Chemistry 3.0
AP English Literature 3.0
AP Govt & Politics:US 3.0

**********START ACADEMIC RECORD**********

Course Number	Course Title		Sem Hrs	Grade
Fall 2016 / College of Liberal Arts and Sciences				
POLI 1300	Intro to Political Thought and Action *Harry Potter and the Dark Arts of Politics*	H	3.0	A
RHET 1030	Rhetoric	H	4.0	A
HIST 1119	Big Ideas: Equality, Oppor, & Policy *Big Ideas: Equality, Opportunity, and Public Policy in America*	H	3.0	A+
CRIM 1447	Intro to the Criminal Justice System		3.0	A-
CSI 1600	Success at Iowa		2.0	S
HONR 1100	Honors Primetime		1.0	S

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	13.0	4.00	13.0	16.0
UI Cum:	13.0	4.00	13.0	16.0

On Dean's List

Spring 2017 / College of Liberal Arts and Sciences				
PHIL 1636	Principles of Reasoning: Arg and Debate		3.0	A
THTR 1140	Basic Acting		3.0	A
CRIM 1410	Introduction to Criminology		3.0	A-
HIST 1262	American History 1877-Present		3.0	A-
HIST 2151	Introduction to the History Major *Immigration, Race, and Islam in Paris*		3.0	A-

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	15.0	3.80	15.0	15.0
UI Cum:	28.0	3.89	28.0	31.0

On Dean's List

Fall 2017 / College of Liberal Arts and Sciences					
PHIL 1034	Liberty and the Pursuit of Happiness	H	3.0	A
POLI 1501	Introduction to American Foreign Policy		3.0	A
SOC 1420	Law and Society		3.0	A
CRIM 3416	Race, Crime, and Justice		3.0	A-
HIST 3409	Medieval Civilization I		3.0	B+

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	15.0	3.80	15.0	15.0
UI Cum:	43.0	3.86	43.0	46.0

On Dean's List

Spring 2018 / College of Liberal Arts and Sciences				
HIST 4271	American Revolutionary Period 1740-1789		3.0	A
LS 1021	Current Issues in Frat/Sor Life		3.0	A
CEE 1030	Introduction to Earth Science		4.0	A-
CRIM 3450	Criminal Legal System		3.0	B+

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	13.0	3.74	13.0	13.0
UI Cum:	56.0	3.83	56.0	59.0

On Dean's List

Summer 2018 / College of Liberal Arts and Sciences				
CRIM 4400	Internship Criminal Justice & Correction		3.0	S

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	0.0	0.00	0.0	3.0
UI Cum:	56.0	3.83	56.0	62.0

Fall 2018 / College of Liberal Arts and Sciences				
HIST 3758	The Ancient African Past		3.0	A
SOC 2130	Sociological Theory		3.0	A
STAT 1020	Elementary Statistics and Inference		3.0	A-
CRIM 3250	Drugs, Deviance, and Social Control		3.0	B

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	12.0	3.67	12.0	12.0
UI Cum:	68.0	3.80	68.0	74.0

On Dean's List

Spring 2019 / College of Liberal Arts and Sciences				
ABRD 3092	IES Rome *Rome, Italy*		18.0	R

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	0.0	0.00	0.0	0.0
UI Cum:	68.0	3.80	68.0	74.0

Fall 2019 / College of Liberal Arts and Sciences				
ASIA 1040	Living Religions of the East		3.0	A
CRIM 2470	Research Methods in Criminology		3.0	A
CRIM 3415	Global Criminology		3.0	A
HIST 3996	Honors Thesis		3.0	A
SOC 2710	The American Family		3.0	A+

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	15.0	4.07	15.0	15.0
UI Cum:	83.0	3.85	83.0	89.0

On Dean's List

THE UNIVERSITY OF IOWA

STUDENT GRADE REPORT

Name:	Emma Tanner Johnson
University ID:	01192670
Month/Date of Birth:	01/06
Date Generated:	06/05/23 07:08 PM

Spring 2020 / College of Liberal Arts and Sciences ‡

CRIM	2460	Policing in Modern Society	3.0	A
HIST	3282	Women & Power in US Hist Since Civil War	3.0	A+
CCP	3103	MoneyWise *Basics of Personal Finance*	1.0	S
CRIM	4930	Teaching Internship	3.0	S
HIST	3193	Undergraduate History Portfolio	0.0	S
HPAS	1230	Hatha Yoga	1.0	S
LLS	1610	Kickboxing	1.0	S
SOC	4909	Graduation Portfolio	0.0	S

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	6.0	4.17	6.0	12.0
UI Cum:	89.0	3.87	89.0	101.0

Fall 2021 / College of Law

LAW	8046	Torts	4.0	2.9
LAW	8032	Legal Analysis Writing and Research I	2.0	3.2
LAW	8017	Contracts	4.0	3.6
LAW	8037	Property	4.0	3.8
LAW	8026	Introduction to Law and Legal Reasoning	1.0	P

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	14.0	3.40	14.0	15.0
UI Cum:	14.0	3.40	14.0	15.0

Spring 2022 / College of Law

LAW	8006	Civil Procedure	4.0	3.0
LAW	8022	Criminal Law	3.0	3.0
LAW	8010	Constitutional Law I	3.0	3.1
LAW	8033	Legal Analysis Writing and Research II	3.0	3.5
LAW	8791	Professional Responsibility	3.0	3.6

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	16.0	3.23	16.0	16.0
UI Cum:	30.0	3.31	30.0	31.0

Fall 2022 / College of Law

LAW	8280	Constitutional Law II	3.0	2.9
LAW	8460	Evidence	3.0	3.2
LAW	8331	Business Associations	3.0	3.3
LAW	8712	Legislation	3.0	4.3
LAW	9124	Journal of Corporation Law	1.0	P

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	12.0	3.43	12.0	13.0
UI Cum:	42.0	3.34	42.0	44.0

Spring 2023 / College of Law

LAW	8105	Administrative Law	3.0	2.9
LAW	8467	Family Law	3.0	3.5
LAW	8670	Labor Law	3.0	3.5
LAW	8350	Criminal Procedure: Investigation	3.0	3.8
LAW	9124	Journal of Corporation Law	1.0	P

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	12.0	3.43	12.0	13.0
UI Cum:	54.0	3.36	54.0	57.0

‡In spring semester of 2020, a global public health emergency required marked changes to university operations that significantly affected student enrollment, learning, and grading. Unusual enrollment patterns and grades during this period reflect the tumult of the time, not necessarily the work of individual students.

*********************END ACADEMIC RECORD*********************

Hours and Points Summary

The Hours and Points Summary includes transfer credit in the "Overall Cumulative" GPA and "Overall Earned" hours (not necessarily hours towards degree). This summary is only informational and will not appear on your official transcript. Your official transcript is only your University of Iowa hours and GPA as displayed above "*****END ACADEMIC RECORD*****"

	Hours	Points	GPA
UI Cumulative	54.0	181.40	3.36
Transfer Cumulative	16.0	63.01	3.94
Overall Cumulative	159.0	589.10	3.71
Overall Earned	186.0		
Transfer Earned	16.0		

THE UNIVERSITY OF IOWA

STUDENT GRADE REPORT

Name:	Emma Tanner Johnson
University ID:	01192670
Month/Date of Birth:	01/06
Date Generated:	01/09/23 04:35 PM

University of Iowa Degree(s):
Bachelor of Arts Conferred May 15, 2020
With University Honors and With Distinction
Major in Criminology, Law and Justice
Major in History
Honors in History

Attempted Transfer Work:

Course Title	Hrs	Grade
Spring 2019 / Institute for the International Education of Students Rome		
ADVENT OF CHRISTIANITY	3.0 SH	A
ITALIAN FASCISM	3.0 SH	A
ITALIAN LANG:NOVICE ABRD I	4.0 SH	A
CONTMP ROMAN CATHOLIC ISSUES	3.0 SH	A
MACHIAVELLI & PHIL OF POWER	3.0 SH	A-

Previous/Transfer institution(s) summary:
Institute for the International Education of Students Rome, Rome, ITALY 16.00 SH

Credit By Exam Summary:
AP US History 3.0
AP Chemistry 3.0
AP English Literature 3.0
AP Govt & Politics:US 3.0

**********START ACADEMIC RECORD**********

Course Number	Course Title		Sem Hrs	Grade
Fall 2016 / College of Liberal Arts and Sciences				
POLI 1300	Intro to Political Thought and Action *Harry Potter and the Dark Arts of Politics*	H	3.0	A
RHET 1030	Rhetoric	H	4.0	A
HIST 1119	Big Ideas: Equality, Oppor, & Policy *Big Ideas: Equality, Opportunity, and Public Policy in America*	H	3.0	A+
CRIM 1447	Intro to the Criminal Justice System		3.0	A-
CSI 1600	Success at Iowa		2.0	S
HONR 1100	Honors Primetime		1.0	S

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	13.0	4.00	13.0	16.0
UI Cum:	13.0	4.00	13.0	16.0

On Dean's List

Spring 2017 / College of Liberal Arts and Sciences				
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THTR 1140	Basic Acting		3.0	A
CRIM 1410	Introduction to Criminology		3.0	A-
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HIST 2151	Introduction to the History Major *Immigration, Race, and Islam in Paris*		3.0	A-

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CEE 1030	Introduction to Earth Science		4.0	A-
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SOC 2130	Sociological Theory		3.0	A
STAT 1020	Elementary Statistics and Inference		3.0	A-
CRIM 3250	Drugs, Deviance, and Social Control		3.0	B

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CRIM 2470	Research Methods in Criminology		3.0	A
CRIM 3415	Global Criminology		3.0	A
HIST 3996	Honors Thesis		3.0	A
SOC 2710	The American Family		3.0	A+

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
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On Dean's List

THE UNIVERSITY OF IOWA

STUDENT GRADE REPORT

Name:	Emma Tanner Johnson
University ID:	01192670
Month/Date of Birth:	01/06
Date Generated:	01/09/23 04:35 PM

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HIST	3282	Women & Power in US Hist Since Civil War	3.0	A+
CCP	3103	MoneyWise *Basics of Personal Finance*	1.0	S
CRIM	4930	Teaching Internship	3.0	S
HIST	3193	Undergraduate History Portfolio	0.0	S
HPAS	1230	Hatha Yoga	1.0	S
LLS	1610	Kickboxing	1.0	S
SOC	4909	Graduation Portfolio	0.0	S

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
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Fall 2021 / College of Law

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LAW	8017	Contracts	4.0	3.6
LAW	8037	Property	4.0	3.8
LAW	8026	Introduction to Law and Legal Reasoning	1.0	P

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	14.0	3.40	14.0	15.0
UI Cum:	14.0	3.40	14.0	15.0

Spring 2022 / College of Law

LAW	8006	Civil Procedure	4.0	3.0
LAW	8022	Criminal Law	3.0	3.0
LAW	8010	Constitutional Law I	3.0	3.1
LAW	8033	Legal Analysis Writing and Research II	3.0	3.5
LAW	8791	Professional Responsibility	3.0	3.6

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	16.0	3.23	16.0	16.0
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Fall 2022 / College of Law

LAW	8280	Constitutional Law II	3.0	2.9
LAW	8460	Evidence	3.0	3.2
LAW	8331	Business Associations	3.0	3.3
LAW	8712	Legislation	3.0	4.3
LAW	9124	Journal of Corporation Law	1.0	P

	Graded Hrs Att	GPA	Graded Hrs Earned	Hrs Earned
UI Term:	12.0	3.43	12.0	13.0
UI Cum:	42.0	3.34	42.0	44.0

‡In spring semester of 2020, a global public health emergency required marked changes to university operations that significantly affected student enrollment, learning, and grading. Unusual enrollment patterns and grades during this period reflect the tumult of the time, not necessarily the work of individual students.

**********************END ACADEMIC RECORD**********************

Hours and Points Summary

The Hours and Points Summary includes transfer credit in the "Overall Cumulative" GPA and "Overall Earned" hours (not necessarily hours towards degree). This summary is only informational and will not appear on your official transcript. Your official transcript is only your University of Iowa hours and GPA as displayed above "*****END ACADEMIC RECORD*****"

	Hours	Points	GPA
UI Cumulative	42.0	140.30	3.34
Transfer Cumulative	16.0	63.01	3.94
Overall Cumulative	147.0	548.00	3.73
Overall Earned	173.0		
Transfer Earned	16.0		

College of Law
Caroline Sheerin
Professor of Legal Analysis, Writing & Research

434 Boyd Law Building
Iowa City, Iowa 52242-1113
caroline-sheerin@uiowa.edu

319-335-9131

March 29, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Emma Johnson

Dear Judge Walker:

I am writing to recommend that you hire Emma Johnson as a clerk in your chambers. Emma was a student in the Legal Analysis, Research, and Writing II class I taught at the University of Iowa College of Law in the spring of 2022. The course developed students' skills in legal analysis and persuasive writing. During the semester, students wrote a brief on two issues of law—the first related to standing, and the second addressed the Treaty Power. For the first draft of the first issue, students worked on a team, and they completed the second issue and the final edits on both issues on their own. Both issues required students to perform extensive legal research, using both primary and secondary resources. I graded the briefs based on the depth and creativity of the arguments, as well as the clarity of the writing. The semester ended with an oral argument, in which each student worked in teams of two to argue the issues in the brief.

Emma is a hardworking student, whose work improved over the course of the semester. She worked very hard all semester to understand the difficult issues that the briefs addressed, and she sought me out frequently for additional guidance. Her final assignment reflected her hard work; she presented interesting arguments that showed she had thought deeply about the issues. She also did a nice job with the oral argument.

In addition, to her academic abilities, Emma is a delightful student to have in class. I enjoyed getting to know her on a personal level. She was also an excellent teammate who worked well with her peers. Indeed, her teammates rated her as excellent in every category on the team assessment, including her efforts with respect to organization, time management, and quality of participation.

Overall, Emma would be a positive addition to your chambers.

Sincerely,

Caroline Sheerin
Professor of Legal Analysis, Writing, and Research

April 03, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to strongly recommend Emma Johnson for a clerkship in your chambers. Emma has been a student in three of my classes and is currently working with me as my research assistant. From each of these experiences, I have witnessed Emma be consistently dependable, honest, and hard working. She is smart and produces very good work. I have relied on her in many ways as my research assistant, and she has risen to every occasion and even gone above and beyond what I asked. She would be an excellent judicial clerk, and I am happy to support her application.

I taught Emma in Spring 2022 in two courses: Criminal Law and Professional Responsibility. While she did well in both classes, her grade in Criminal Law (3.0) was not indicative of her performance in class throughout the semester. While I'm not quite sure what happened in her final exam, I'm confident she is capable of much more than that single grade showed.

Her performance in Professional Responsibility was more aligned with showcasing her strengths. There she earned a 3.6, which was notable because she was among a handful of first-year students. The class was predominantly upper-level students, so the fact that she competed on such a high level shows the strengths of her intellect and her ability to apply rules and cases succinctly and deftly to solve complicated legal issues.

She is also in my Criminal Procedure class this semester, and while it's too early to report any testing results, I can report her ability to answer cold calls, ask good questions, and make interesting connections across the material. She is a strong class participant, and I expect her midterm and final exams to be strong based on her performance to date.

In addition to teaching her in three different classes, she is also my Research Assistant during this 2022-2023 academic year. In that role she has overseen several projects for me, most recently helping me find new cases and material to understand how criminal procedure has developed in France since the last time I taught Comparative Criminal Procedure as part of our summer French program. Again, Emma has been solid through and through. She took a rather open-ended assignment and tailored it to find interesting, pertinent material for me. She is reliable and I appreciate what a great job she has done—and continues to do—with this assignment.

As Emma continues to work for me as my Research Assistant this year, I continue to be impressed by her intellect, her strong work ethic, and her willingness to seek out work. When she is finished with a task, she promptly asks for another. And if I give her an assignment and do not explain it well, I am always grateful when she asks clarifying questions rather than shooting in the dark.

Last but not least, Emma is a good institutional citizen—a real team player. She works well with the other research assistants, and she is a leader on many fronts here at the law school, including serving as a 2L representative for the student bar association. That leadership role has proved to be particularly important this year as the law school community has struggled through several pop-up situations. Emma is one of a handful of student leaders whose voices have been integral to navigate through these hard situations, listen to diverse voices, and brainstorm solutions.

In short, I am very happy to support Emma Johnson's application to clerk for you. If you give her an opportunity work in your chambers, I know she would bring the same traits I have seen, including her dependability, strong work ethic, and smart mind.

Thank you very much for considering her application. I would be more than happy to answer any questions you may have.

Yours very truly,

Emily Hughes
Senior Associate Dean for Academic Affairs
Edward F. Howrey Professor of Law
University of Iowa College of Law
Personal email: ehughes474@gmail.com
Direct office phone: 319-335-9886
Personal cell phone: 319-541-7588

INFORMATIONAL COVER LETTER:

I wrote this appellate brief for my Spring 2023 *Legal Analysis, Writing and Research* course. I was assigned to represent the defendants. The subject was whether the plaintiff has standing and whether the United States Congress has the authority to enact the fictional Protecting Our Students Act based upon a United Nations Treaty.

To shorten this writing sample, I eliminated my Table of Authorities, the Jurisdictional Statement, and Statutes, Constitutional Provisions and Treaties. I would be happy to provide them upon request. I have also eliminated the second issue to save space for this writing sample.

Supreme Court of the United States.

GREGORY LUMBACH, Petitioner,

v.

MERRICK GARLAND, In his official capacity as Attorney General of the United States;

UNITED STATES OF AMERICA, Respondents

No. 22 CV 1234

March 8, 2022.

On Writ of Certiorari to the United States Court of Appeals for the 6th Circuit.

Brief for Petitioner

Emma Johnson

I. QUESTION PRESENTED

1. Whether the District Court and Court of Appeals erred when granting the Motion to Dismiss due to a lack of subject matter jurisdiction when the injury at stake (federal incarceration) comes from a threat of federal prosecution?

[Question Presented #2 Omitted]

II. TABLE OF CONTENTS

III. STATEMENT OF THE CASE

Gregory Lumbach is a physical education teacher at Hopkinsville High School in Kentucky. R. at 1. Throughout his years of teaching, Lumbach has used corporal punishment to induce participation in students and intends to continue. Id. at 3.

Prior to the beginning of the Lumbach's career, the United States signed the United Nations Convention on the Rights of the Child (the Convention). Id. Five years later, the United States Senate ratified the Convention. Id. Another year later, Congress enacted. 18 U.S.C. § 120, which is commonly known as the Protecting Our Students Act (POSA). POSA states that one of its purposes is to "(1) eliminate the use of corporal punishment in schools." 18 U.S.C. § 120(2). POSA further states that "[n]o student shall be subjected to corporal punishment by program personnel, teachers are included as program personnel." 18 U.S.C. § 120(4).

On November 15, 2021, the Federal Bureau of Investigation held a forum to discuss the POSA, which was led by Special Agent Daniel Wu. The forum stoked Lumbach's fear of prosecution. R. at 3. An attendee voiced a question about the enforcement of the POSA. Id. The FBI Special Agent responded that he "certainly hoped all teachers and school officials in the district would comply with the provisions of the POSA." Id. Lumbach left fearing that he would be charged with a crime if he ever engaged in his teaching style again. Id.

Lumbach then filed a Complaint with the District Court of the Western District of Kentucky stating that the POSA is unconstitutional because Congress exceeded its authority through the treaty power. Id. at 4. The Defendants filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction, which the district court denied. Id. at 5. The Defendants then filed a second motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, which the district court granted. Id. at 7. Lumbach then filed a

notice of appeal with the Sixth Circuit Court of Appeals, and the Defendants cross appealed. The Sixth Circuit affirmed the district court's dismissal. Id. at 8. This Court has granted certiorari on February 23, 2022.

IV. SUMMARY OF THE ARGUMENT

Lumbach has standing because there is an injury-in fact that is concrete, particularized and imminent. Courts can only hear cases or controversies in which a plaintiff can demonstrate standing through an injury-in fact, that also has the ability to be redressed and causation that links them. The redressability and causation are met in this case; however, the injury-in fact is the fact at issue which Lumbach still meets. Lumbach can prove that his injury can fulfill the factors of an injury because it is concrete, particularized and imminent. Even though Lumbach's injury is of an intangible harm, the future risk of enforcement satisfies the concreteness requirement. Because Lumbach's injury is personal to him, and places a stake in his own behavior, Lumbach is able to prove particularization. Lumbach's injury satisfies the imminentness requirement due to the substantial risk of FBI enforcement as well as the credible threat that such enforcement demonstrates. This enforcement can be seen through the subjective chill, warnings of intended enforcement, and the subjectivity of such enforcement. Because Lumbach's injury is concrete, particularized and imminent, Lumbach has standing for his case of the unconstitutionality of the POSA.

[Summary eliminated for Question Presented #2]

V. ARGUMENT

A defendant must assert a defense by motion of lack of subject-matter jurisdiction in order for a Court to dismiss a claim for relief according to the Federal Rules of Civil Procedure rule 12 (b)(6). FED. R. CIV. P. 12(B)(6). Because the Plaintiff, Gregory Lumbach, has standing,

the Court should rule on behalf of the Plaintiff. The Court has jurisdiction in the judicial power that is extended by the United States Constitution, which obligates a court to hear a case or controversy. U.S. CONST. art. III §2. "To establish Article III standing, a plaintiff must show an 'injury-in fact, traceability, and redressability." Lujan v. Defs. of Wildlife, 504 U.S. 555, 555 (1992). The traceability and redressability requirements within the present case are met in this dispute and therefore not at issue.

The injury-in fact, such as Lumbach's overwhelming threat of prosecution, must be "concrete and particularized" and "actual or imminent," not "conjectural" or "hypothetical." Id. at 555. Because of his intangible harm that arises due to a future risk, Lumbach is able to fulfill the concrete element of injury-in fact. Lumbach also meets the element that the injury is particularized because the FBI or POSA threatened his teaching style. The substantial risk and credible threat of enforcement from the FBI Special Agent's assertion that will require compliance. The injury suffered by Lumbach demonstrates standing because it is concrete, particularized and imminent.

A. Lumbach Has Standing Because His Intangible Harm Due to a Future Risk Presents a Concrete Injury.

Lumbach's injury is concrete because he possesses a future risk of an intangible harm to his livelihood and reputation. To prove the substantial risk of the injury, Lumbach must prove that his injury is concrete even if the harm that would occur is intangible such as a future event. Spokeo, Inc. v. Robins, 578 U.S. 330, 333–42 (2016). The Court has examined how the common law may come into play where the plaintiff does not need to allege any additional harm beyond a mere procedural violation. Id. In Spokeo, the defendant operated a search engine website where people can be researched. Id. at 333. After someone ran a search on the plaintiff, they discovered false information and reported it back to the plaintiff. Id. at 333. The plaintiff alleged that the

defendant's web search engine failed to comply with the Fair Credit Reporting Act and injured the plaintiff by providing false information about the plaintiff. Id. The website created a harm to the reputation of the plaintiff, which the Court felt constituted an intangible harm. Id. The false information harmed the plaintiff's employment, and financial standings which ultimately created intangible damage to his livelihood. Id. The Court held that intangible injuries can be concrete, even though tangible injuries are easier to determine. Id. at 341– 42. Even though the plaintiff's injury was harder to discern due to its intangibility, the harm could be traced back and redressed at the source. Id. at 342.

Lumbach's alleged injury comes from the intangible harm of future punishment through his teaching practices. Lumbach's teaching style and his position as a teacher create his livelihood. If damaged through allegations of potential false information just as the plaintiff alleged in Spokeo, Lumbach could face significant intangible harm to his own livelihood. As the statement from the FBI Special Agent suggests, there is the potential for future real harm to arise from such practices such as incarceration. The plaintiff in Spokeo suffered a loss in business and in reputation, Lumbach will also suffer a loss in his own business of teaching and the reputation he has earned in the district over the years. The mere allegation of violating the POSA could create the same intangible harm for which the plaintiff in Spokeo suffered from. The harm while not physical, still posed a significant threat to the livelihood of both plaintiffs. The future intangible harm faced by Lumbach from a risk of enforcement strengthens the concreteness of an injury-in fact.

B. Lumbach Has Standing Because He Demonstrates a Personal Stake in the Injury.

Lumbach fulfills the particularized element of injury-in fact because he holds a personal stake in the future injury due to the individualized nature of his actions as a teacher. "The

plaintiff's complaint must establish that they have a personal stake in the alleged dispute." Raines v. Byrd, 521 U.S. 811, 814–21 (1997); see also Murray v. U.S. Dep't of Treasury, 681 F.3d 744, 750 (6th Cir. 2012); TransUnion L.L.C. v. Ramirez, 141 S. Ct. 2190 (2021). In TransUnion L.L.C. v. Ramirez, the defendants' credit-reporting agency conducted various credit checks for different entities against different watch lists. Id. When one plaintiff went to purchase a car at a local dealership, and the dealership used the defendant's company to run a credit check, she was denied due to the report's result of the wife as a terrorist. Id. After a variety of plaintiffs came forward, it was discovered that the credit-agency reported a variety of false positives. Id. The plaintiffs alleged that when a credit reporting agency adjusted reports, they suffered a personal stake in the injury. Id. They were denied loans, vehicles, housing applications or other financial injuries. Id. The Court held that because the false reports created a real impact on an individual there was a personal stake created which demonstrated a particularization to the injury. Id. Each injury directly affected each plaintiff within their own life whether through rejection of car loans, credit cards or other credit required activities. Id. The plaintiffs were each unable to continue in their daily lives and suffered an intangible harm that affected their individual livelihood. Id.

Lumbach's complaint demonstrates a personal stake in the disputed behavior. Id. Lumbach suffers a personal stake from the POSA because it limits his ability to fulfill his duties as a teacher, creating his own personal stake in the claim. The plaintiffs in TransUnion continued with their daily routine until it was disrupted to the invasion into their livelihood. Id. Here, Lumbach follows the same path; his teaching style had worked consistently through his career. Just as each plaintiff in TransUnion felt attacked by the false reports from the defendants, Lumbach's livelihood would be affected, thus creating the same personal stake in his injury. Id.

The POSA and the threat of enforcement create a personal stake to Lumbach's injury. It is his own conduct that is being examined through the POSA and his person that would be incarcerated. Through his personal stake in the injury from the direct impact on his teaching, Lumbach's alleged injury fulfills the personal stake element of the injury-in fact.

C. Lumbach Has Standing Because the Substantial Risk and Credibility of the Threat of Enforcement Satisfy the Imminentness of an Injury.

When a plaintiff alleges that a statute is unconstitutional and intends to continue to engage in the conduct that the statute prohibits, there is a credible threat of enforcement which makes the injury imminent. Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 290–91 (1979). The plaintiff does not need to wait for the enforcement to seek relief. Id. The requirement of imminentness within an injury in fact can be strengthened through the intention of performance as well as the credible threat of enforcement. Id. at 290. The imminentness of an injury is satisfied here because Lumbach intends to continue his teaching practice in addition to the credible threat of enforcement alluded to in FBI Special Agent Wu's presentation of the POSA and the intended consequences.

1. Lumbach satisfies the imminentness of an injury because Lumbach engaged in the conduct which creates a substantial risk of FBI enforcement.

Because Lumbach intends to engage in the behavior again, there is a substantial risk of FBI enforcement in accordance with the POSA. A plaintiff's allegation of a future injury is? may be sufficient to meet the requirement if the injury is certainly impending or there is a substantial risk that the injury will occur. Susan B. Anthony List v. Driehaus, 573 U.S. 149, 154–60 (2014). In Susan B. Anthony List, the plaintiffs intended to disseminate information criticizing the supportive votes of the plaintiff on the Affordable Care Act. Id. This action followed a billboard displayed the criticism of the vote which was a prominent method for the plaintiffs to spread

their message. This posed a conflict with the state statute against false statements during the course of a political campaign. If the plaintiffs' organization continued to disseminate their information, the Ohio government would consider it false information and thus worthy of prosecution. If the plaintiffs were going to continue with their action, they would be prosecuted. This created a substantial risk and thus there was a certainty of impending intangible harm. Id. at 154.

Similar to the plaintiff's conduct in Susan B. Anthony, Lumbach's teaching style is prohibited by the statute of the POSA and creates a substantial risk of enforcement if he continues. Just as the plaintiffs in Susan B. Anthony had previously distributed negative information about the candidate and posted on billboards, Lumbach continued engaged in the prohibited teaching conduct prior to the passage of the POSA. Lumbach knew his conduct is illegal but as the plaintiffs in Susan B. Anthony, wanted to continue with his actions due to the effect on his livelihood. Id. It demonstrates "an intention to engage in a course of conduct arguably affected with constitutional interest." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 154–60 (2014). As Lumbach stated in the Record, he intends to continue to use corporal punishment again. Because of his intentions and the statements made by the FBI Special Agent there is a substantial risk that enforcement will occur. His knowledge and intent parallels the actions of the plaintiffs in Susan B. Anthony and ultimately will lead to the same result. Id. This is similar to Susan B. Anthony, where the Court explained that a threat is further substantial when an administrative agency has not disavowed enforcement based on the plaintiff's continued conduct.

2. Lumbach satisfies the imminentness of an injury because the FBI's presence demonstrates a credible threat of enforcement.

In order to overcome the element of the imminent element of the injury-in fact, the plaintiff can demonstrate a credibility of a threat of enforcement through an array of factors. McKay v. Federspiel, 823 F.3d 862, 864–69 (6th Cir. 2016). When considering whether the FBI presentation creates a credible threat of enforcement, the court considers the following factors: (1) the subjective chill, (2) enforcement warnings and (3) the subjective enforcement. Id. Such factors strengthen the credibility of a threat of enforcement that overcome the burden of the imminent element of the injury-in fact, when examining the circumstances of the FBI presentation and directives. Id.

the FBI's presentation demonstrated an intention of enforcement which strengthens the credible threat of enforcement. When a plaintiff can allege a subjective chill through the disavowing of enforcement, then it strengthens the credible threat of enforcement such as the presence of the FBI. McKay v. Federspiel, 823 F.3d 864–69 (6th Cir. 2016). In McKay, the plaintiff challenged the constitutionality of a ban on electronic recording devices in a government building without judicial permission. Id. at 864. The plaintiff argued that there is a credible threat of enforcement because the device itself implied enforcement. Id. at 864. The Court held that the subjective chill through the disavowing of enforcement alone is not enough to prove that there is a credible threat of enforcement. Id. at 869.

Here, the mere presence of an FBI presentation demonstrates the subjective chill of enforcement and coupled with other factors can add to the credibility of the threat. Even though the FBI Special Agent did not affirmatively say that it would prosecute those who violated the POSA, his mere presence in a county public school demonstrates the credibility. The plaintiffs from McKay focused on the mere existence of recording devices influenced the credibility of

enforcement, just as Lumbach argues that mere existence of FBI Special Agents increases the credibility of enforcement. Id.

Warnings such as those given by the FBI Special Agent, can further strengthen the credibility of enforcement. When the enforcing agency demonstrates warnings of engaging in prohibited contact, then the warnings can be sufficient to demonstrate credible enforcement. Kiser v. Reitz, 756 F.3d 601, 604–10 (6th Cir. 2014). In Kiser, the plaintiff was a dentist and orthodontist, who was restricted in his advertisement ability by the alleged unconstitutionality of the state code. Id. at 604-05. After he continued to advertise both specialties, he received a letter that he must comply with the regulations. Id. At 609. The Sixth Circuit held that the plaintiff had provided "facts demonstrating that he has suffered an injury-in fact because he faced a credible threat that the regulations will be enforced." Id. at 610.

Lumbach's intent of continuous actions that violate a statute mirror that of Kiser. The plaintiff in Kiser received a warning on his conduct and continued to engage regardless, whereas Lumbach is intending to do the same thing. Similarly, Lumbach received a warning of enforcement in the FBI Special Agent's presentation. Both plaintiffs had knowledge of their actions and chose to disregard the statue in favor of the results despite being warned against it.

If the warning provided does not explicitly state who will be prosecuted, it can still add to the credibility of prosecution. Further, if enforcement comes without express intent of whom the enforcement is directed, then it can still prove credibility of prosecution. Online Merchs. Guild v. Cameron, 995 F.3d 540, 540–51 (6th Cir. 2021). In Online Merchs. Guild, the plaintiff challenged the constitutionality of Kentucky's price-gouging laws as applied to sellers on Amazon. Id. At 540. The court held that even if not all factors are identified, there can be a sufficiently credible threat of enforcement to establish an injury. Id. At 540. The plaintiff

demonstrated that the defendant had often stated publicly that they would litigate enforcement. Id. At 551.

Similarly, the FBI Special Agent demonstrated the same posturing of enforcement that places the fear of prosecution in the minds of all teachers as in Online Merchs. Guild. The focused enforcement through the presence of an FBI Special Agent and the magnitude of such demonstrates the credible enforcement attributed to the subjective enforcement.

Lumbach's injury in fact satisfies all the necessary requirements present to prove standing. His injury is concrete even though the harm could be deemed intangible. It creates a personal stake for him because it concerns his own teaching style and thus is particularized. And the injury proves to be imminent because of Lumbach's intention to continue to use corporal punishment despite the FBI warning demonstrates a substantial risk of harm. There is also a credible threat of enforcement through the subjective chill, warnings of the enforcement and the subjective nature of the enforcement, which collectively demonstrates standing.

VI. CONCLUSION

The Plaintiff asks this Court to enter judgment in his favor and grant the following relief:

1. An affirmation of District Court that Lumbach has standing.

Applicant Details

First Name	**Julie**
Last Name	**Jones**
Citizenship Status	**U. S. Citizen**
Email Address	**juliejones@law.gwu.edu**
Address	**Address** **Street** **2130 P St., NW, Apt 710** **City** **Washington** **State/Territory** **District of Columbia** **Zip** **20037** **Country** **United States**
Contact Phone Number	**6103018212**

Applicant Education

BA/BS From	**Other**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/ LLB	**May 21, 2023**
Class Rank	**10%**
Law Review/ Journal	**Yes**
Journal(s)	**The George Washington Law Review (Notes Editor, Volume 91)**
Moot Court Experience	**Yes**
Moot Court Name(s)	**GW Law First Year Competition (Finalist)** **Van Vleck Constitutional Law Moot Court Competition (Second Place Best Oral Advocate) (Semi-Finalist)**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Kettler, Cheryl
ckettler@law.gwu.edu
202-994-0976

Schoenbaum, Naomi
nschoenbaum@law.gwu.edu
917.607.7246

Lee, Cynthia
cynthlee@law.gwu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Julie Jones
2130 P Street, NW, Apartment 710, Washington, DC 20037 | (610) 301-8212 | juliejones@law.gwu.edu

March 24, 2023

The Honorable Jamar K. Walker
Albert V. Bryan Sr. United States Courthouse
401 Courthouse Square
Alexandria, VA 22314

Dear Judge Walker:

I am a 3L at The George Washington University Law School and will be graduating in May 2023. I am writing to apply for a judicial clerkship with you for the 2024 Term. In the time between graduation and the beginning of this clerkship, I will be working as a Litigation Associate at Dechert LLP in Washington, DC.

My application packet includes my resume, law school transcript, and writing sample. I have also enclosed recommendations from Professors Cynthia Lee, Cheryl Kettler, and Naomi Schoenbaum. I am currently a Research Assistant to Professor Lee, and she was also my professor for Criminal Procedure. Professor Kettler teaches Fundamentals of Lawyering, and Professor Schoenbaum teaches Torts and Employment Law.

Thank you for your time and consideration.

Respectfully,

Julie Jones

Julie Jones

2130 P Street, NW, Apartment 710, Washington, DC 20037 | (610) 301-8212 | juliejones@law.gwu.edu

EDUCATION

The George Washington University Law School — Washington, DC
J.D. Expected — *May 2023*

GPA: 3.812
Honors: George Washington Scholar (Top 1% to 15% of Class) (All Semesters)
Van Vleck Constitutional Law Moot Court Competition (Second Place Best Oral Advocate) (Semi-Finalist)
Journal: *The George Washington Law Review* (Notes Editor, Volume 91)
Publication: Julie Jones, *Pas de Deux Between Unionization and Federal Arts Funding: Why Congress Must Address Its Overcorrection that Impeded the Freelance Dance Industry*, 30 UCLA ENT. L. REV. (forthcoming 2023).
Activities: GW Law Moot Court Board (Member)
GW Law Association for Women (Co-Director of Events, 2021-2022)
Mid-Atlantic Innocence Project (Volunteer, Case Screening Project)

Dean College — Franklin, MA
B.A., *summa cum laude*, Dance — *May 2018*

Honors: Golden Key Honour Society (Top 15% of Class)
Activities: National Society of Leadership and Success (Executive Board Member)

EXPERIENCES

Dechert LLP — Washington, DC
Litigation Associate — *Fall 2023*

The George Washington University Law School — Washington, DC
Research Assistant to Professor Cynthia Lee (Criminal Procedure) — *Fall 2022–Spring 2023*

United States Department of Justice — Washington, DC
Legal Extern, Civil Division, Consumer Protection Branch — *Fall 2022*

- Researched and drafted memoranda on case law and legislative history regarding several statutes to assist attorneys in bringing various enforcement actions
- Created and edited documents to be used by a trial team in an upcoming federal prosecution
- Collaborated with attorneys and other externs to discuss best methods behind bringing cases, engaging as a team, and conducting legal research

Dechert LLP — Washington, DC
Summer Associate — *Summer 2022*

- Researched and drafted memoranda on various litigation matters pertaining to areas of antitrust, securities, employment, and contract law
- Assisted on pro bono cases concerning human trafficking and legal name changes
- Collaborated with Summer Associates to create a proposal for the firm to use in increasing outreach to law schools

United States Attorney's Office for the District of Columbia — Washington, DC
Legal Extern, Civil Division — *Fall 2021*

- Researched and drafted legal memoranda pertaining to civil litigation matters, including issues arising under the False Claims Act, Freedom of Information Act, and Privacy Act
- Examined documents collected pursuant to an investigation into a government procurement matter and drafted a memorandum outlining facts substantiating the government's claims

Superior Court of the District of Columbia — Washington, DC
Judicial Intern, Felony Docket, Judge James A. Crowell IV — *Summer 2021*

- Researched and drafted memoranda in connection with cases before the court
- Analyzed non-compliance and alleged violation reports for use in determining whether hearings must be set or probation conditions modified

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G28990726
Date of Birth: 25-OCT

Date Issued: 06-FEB-2023

Record of: Julie Jones

Page: 1

Student Level: Law
Admit Term: Fall 2020

Issued To: JULIE JONES
JULIEJONES@GWU.EDU

REFNUM:96134013

Current College(s):Law School
Current Major(s): Law

GEORGE WASHINGTON UNIVERSITY CREDIT:

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2020			
	Law School		
	Law		
LAW 6202	Contracts Schooner	4.00	B
LAW 6206	Torts Schoenbaum	4.00	A+
LAW 6212	Civil Procedure Berman	4.00	A-
LAW 6216	Fundamentals Of Lawyering I Kettler	3.00	A
Ehrs	15.00 GPA-Hrs 15.00 GPA 3.733		
CUM	15.00 GPA-Hrs 15.00 GPA 3.733		
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Spring 2021			
	Law School		
	Law		
LAW 6208	Property Nunziato	4.00	B+
LAW 6209	Legislation And Regulation Schaffner	3.00	A-
LAW 6210	Criminal Law Cottrol	3.00	A
LAW 6214	Constitutional Law I Morrison	3.00	A
LAW 6217	Fundamentals Of Lawyering II Kettler	3.00	A
Ehrs	16.00 GPA-Hrs 16.00 GPA 3.771		
CUM	31.00 GPA-Hrs 31.00 GPA 3.753		
Good Standing			
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2021			
	Law School		
	Law		
LAW 6360	Criminal Procedure Lee	3.00	A
LAW 6380	Constitutional Law II Gavoor	3.00	B+
LAW 6387	Voting Rights Pershing	2.00	A-
LAW 6668	Field Placement Mccoy	2.00	CR
LAW 6671	Government Lawyering Lore	2.00	A
Ehrs	12.00 GPA-Hrs 10.00 GPA 3.733		
CUM	43.00 GPA-Hrs 41.00 GPA 3.748		
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Spring 2022			
LAW 6218	Professional Responslbty/Ethic Tuttle	2.00	A
LAW 6230	Evidence Pierce	3.00	A+
LAW 6238	Remedies Trangsrud	3.00	B+
LAW 6268	Employment Law Schoenbaum	3.00	A+
Ehrs	11.00 GPA-Hrs 11.00 GPA 4.000		
CUM	54.00 GPA-Hrs 52.00 GPA 3.801		
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			

********** CONTINUED ON PAGE 2 **********

Katie Cloud
Interim University Registrar

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THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

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GWid : G28990726
Date of Birth: 25-OCT

Date Issued: 06-FEB-2023

Record of: Julie Jones

Page: 2

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2022			
LAW 6364	White Collar Crime Eliason	3.00	A
LAW 6390	Employment Discrimination Law Sonderling	3.00	A
LAW 6570	Int'L Human Rights Of Women Celorio	2.00	A-
LAW 6644	Moot Court - Van Vleck	1.00	CR
LAW 6652	Legal Drafting Grant	2.00	A-
LAW 6667	Advanced Field Placement Grillot	0.00	CR
LAW 6668	Field Placement Mccoy	3.00	CR
Ehrs	14.00 GPA-Hrs 10.00 GPA	3.867	
CUM	68.00 GPA-Hrs 62.00 GPA	3.812	
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			
Fall 2021			
Law School			
Law			
LAW 6657	Law Review Note	1.00	----------
	Credits In Progress:	1.00	
Spring 2022			
LAW 6657	Law Review Note	1.00	----------
	Credits In Progress:	1.00	
Fall 2022			
LAW 6658	Law Review	1.00	----------
	Credits In Progress:	1.00	
Spring 2023			
LAW 6232	Federal Courts	4.00	----------
LAW 6362	Adjudicatory Criminal Pro.	3.00	----------
LAW 6595	Race, Racism, And American Law	2.00	----------
LAW 6617	Law And Medicine	3.00	----------
LAW 6658	Law Review	1.00	----------
	Credits In Progress:	13.00	

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	68.00	62.00	236.33	3.812
OVERALL	68.00	62.00	236.33	3.812

########## END OF DOCUMENT ##########

Katie Cloud
Interim University Registrar

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THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; *B,* Good; *C,* Satisfactory; *D,* Low Pass; *F,* Fail; *I,* Incomplete; *IPG,* In Progress; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *P,* Pass; *NP,* No Pass; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added: *A-, B+, B-, C+, C-, D+, D-.*
Effective Summer 1980: The grading symbols: *P,* Pass, and *NP,* No Pass, replace *CR,* Credit, and *NC,* No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) *A,* Excellent; *B,* Good; *C,* Minimum Pass; *F,* Failure; *I,* Incomplete; *IPG,* In Progress; *CR,* Credit; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; *B+, B, B-,* Good; *C+, C, C-,* Passing; *D,* Minimum Pass; *F,* Failure; *CR,* Credit; *NC,* No Credit; *I,* Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System

H, Honors; *HP,* High Pass; *P,* Pass; *F,* Failure; *IP,* In Progress; *I,* Incomplete; *CN,* Conditional; *W,* Withdrawal; *X,* Exempt, *CN/P,* Conditional converted to Pass; *CN/F,* Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

For historical information not included in the transcript key, please visit http://www.gwu.edu/transcriptkey

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to lend my enthusiastic support to Julie Jones's application for a judicial clerkship with your chambers. I know Ms. Jones particularly well because she was my student at The George Washington University Law School for the two-semester, six-credit-hour Fundamentals of Lawyering courses from August 2020 through April 2021.

Superior First-Year Performance
My relationship with Ms. Jones began in August 2020, when she became a student at GW Law. My course is a required, year-long class in which first-year law students learn research, predictive legal analysis, persuasive argumentation, legal citation, oral advocacy, and various ethics issues. I taught the course entirely online due to COVID, but altered my usual teaching approach to emphasize two activities that are ordinarily left to students' discretion. As part of the course, I assigned Ms. Jones (and her classmates) to teams to work on many of the initial assignments critical to major assignments. Students took turns acting as leaders or participants and worked with different teammates over the year.

Ms. Jones was an exceptional addition to teams. Whether she led the team or supported its work, she was a collaborator. She came prepared and made notable contributions. Based on this experience, I would anticipate that she would be an asset in your chambers because she is a down-to-earth, cooperative individual who sets high standards for her own work and can extract meaningful work from others.

Additionally, I encouraged students to attend more than the two required individual conferences that GWU Law ordinarily seeks from students. This gave me an opportunity to get to know Ms. Jones better and explore in more detail her career objectives. Ms. Jones demonstrated certain traits consistently: 1) maturity and dedication to learning her profession, well above that of some of her colleagues; 2) a comfortable rapport with supervisors, peers, and colleagues; and 3) willingness to work hard without the incentive and "compensation" of immediate grades.

By her second semester in law school, Ms. Jones produced for my class work consistently in the superior range of proficiency. I have found her legal research thorough, her legal analysis grounded in logic, and her legal writing of superior quality.

Prospects for Success in Clerkship
Legal writing courses prompt a fair amount of student anxiety. As a law student working in isolation for most of the academic year due to the virus, Ms. Jones has been on the front lines of handling those student concerns. Ms. Jones displayed an unruffled demeanor and mature advice that made her an invaluable asset to my other law students.

The handling of matters in a judge's chambers requires diplomacy, sensitivity, and the ability to maintain confidences. Ms. Jones sets very high standards for herself in these areas. I would be pleased to employ her if that opportunity arose.

In summary, Ms. Jones is everything an employer could want: committed, insightful, detail-oriented, well balanced in her analytical and communication skills, thorough in all she undertakes, able to receive and offer instruction, able to work together or independently, mature in her judgment and demeanor, reliable, and deserving of trust. These skills should serve her well in the capacity of judicial clerk. For these reasons, I unreservedly recommend her for a judicial clerkship. Please let me know if I may elaborate on these credentials.

Very Truly Yours,

Cheryl A. Kettler
Visiting Associate Professor of Legal Research & Writing

Cheryl Kettler - ckettler@law.gwu.edu - 202-994-0976

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Julie Jones for a clerkship. Ms. Jones is an accomplished student whose legal acumen and personal skills would make her an asset to your chambers.

Ms. Jones was a student in my Fall 2020 Torts class. Ms. Jones earned an A+ in the course, one of only a very few students to do so in a class of 115 students. Her exam was outstanding in the breadth of issues identified and the sophistication with which she addressed these issues. GW is a very large law school, and at the top of the class, most students have turned down opportunities to attend more elite law schools. That Ms. Jones bested these students on the exam demonstrates her outstanding legal analytical skills.

I was not surprised by Ms. Jones's exam based on her class performance. I use the Socratic method in my course, which is difficult for many students, especially in the early days of law school. Ms. Jones handled it with ease and confidence. I recall asking her about a case in which an exception arose to the typical rule of not adjusting the standard of care based on a party's mental limitations. It is tricky to discern why in this particular case, the court lowers the expectation of due care. Ms. Jones was very thoughtful on what factors in this case might have led the court to relax the rule.

Ms. Jones is sensitive to the intersection of law and policy and has brought especially meaningful contributions to class discussion on these topics. Ms. Jones is currently a student in my Employment Law class. In a class on the Supreme Court's 2009 decision in Ricci v. DeStefano on an employers' right to engage in disparate treatment to avoid disparate impact liability, I used the case as an opportunity to think about alternative hiring and promotion practices to promote equality. One alternative was a lottery system. Ms. Jones had cogent and interesting thoughts on whether this would be a beneficial alternative.

Aside from Ms. Jones's analytical skills, her personal skills would also contribute to your chambers. Ms. Jones is personable and easy-going, and would get along well with others.

Very truly yours,

Naomi Schoenbaum

Naomi Schoenbaum - nschoenbaum@law.gwu.edu - 917.607.7246

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It gives me great pleasure to highly recommend Julie Jones for a position as a judicial law clerk. Julie was a student in my Criminal Procedure class during the fall of 2021 and received an A in that class. I think so highly of Julie that I have offered Julie a position as a Research Assistant and am delighted to report that she will be working with me during her 3L year. Whether a student has excellent grades is only one thing I consider when choosing who to hire as a Research Assistant. I also think about whether the student can handle multiple projects at the same time, whether the student responds quickly to emails (not all do these days), and whether the student is hard working and has excellent research and writing skills. Most of the students I hire as Research Assistants are on the GW Law Review, as is Julie, and many hold editorships on the GW Law Review, as will Julie next year.

Julie is truly an excellent law student. She has been designated as a George Washington Scholar for each semester of law school—a recognition given only to students in the top 1 to 15 percent of their class. Not only has she received mostly A grades in law school, including an A+ in her Torts class, Julie's final exam in my Criminal Procedure class was one of the strongest exams in the class. I give very few A grades, and Julie's exam received an A grade.

Julie not only did well on the final exam, she also performed well on the quizzes and writing assignments in that class throughout the semester. I gave quizzes to the students in my Criminal Procedure course almost every single class. These quizzes had to be completed one hour before class, so the student had to do the reading assignment and take the quiz without the benefit of having the professor give them the answers to the questions. Julie not only completed each quiz by the deadline, she also received perfect scores on many of those quizzes.

I also gave the students regular writing assignments (class exercises), which were fact patterns that required the students to identify the legal issue, the applicable rules of law, make arguments for the prosecutor and defense attorney, and then advise how the judge should rule. For each class exercise assigned, the student had to do this type of legal analysis and submit their writing before class. During class, the students would meet in small groups to discuss the class exercise and formulate oral arguments. Half the class would be assigned to role play as prosecutors and the other half would be assigned to role play as criminal defense attorneys. I would then call on small groups at random to give their oral arguments. After class, students had to go back and improve upon their analysis and re-submit their writing assignment. Julie completed all of these writing assignments in a timely fashion and ended up with a perfect score on all the writing assignments.

In addition, Julie had excellent attendance, and was always prepared when called upon. Julie's law school record is consistent with her lifetime of academic achievements, as she graduated summa cum laude from Dean College in 2018.

Julie's excellence further shines through in her legal research and writing skills. She received an A for both semesters of GW Law's Legal Research & Writing class, Fundamentals of Lawyering. The first semester of this course focused on predictive writing while the second semester taught persuasive writing. The second semester presented Julie with the opportunity to write her first appellate brief and participate in her first oral argument.

As mentioned above, Julie is a member of and will soon be an editor on The George Washington Law Review. She was invited to join the Law Review after competing in a journal competition that tested Bluebooking skills and required a written analysis of a Supreme Court opinion. Last month, Julie was selected by her peers on the Law Review to serve as a Notes Editor for Volume 91—an opportunity that demonstrates how highly her peers value her editing and writing skills. I was thrilled to hear that Julie is going to be a Notes Editor, as her interest in the Note-writing process stood out to me after she took initiative to speak with me early in the fall semester about potential Note topics.

In addition to her legal research and writing experience on the Law Review, Julie has further honed her research and writing skills through various internship and externship opportunities. After her 1L year, she served as an intern to Judge Crowell on the felony docket at the Superior Court of the District of Columbia and worked extensively on compassionate release issues due to the COVID-19 pandemic. Last fall, Julie externed in the Civil Division of the United States Attorney's Office for the District of Columbia where she had the opportunity to engage with a wide variety of civil litigation matters. This summer, she will be working as a Summer Associate for Dechert LLP in Washington, DC, where she will have additional opportunities to improve her legal research and writing skills. Next year, she will be working for me as a Research Assistant. As a Research Assistant, she will further hone her legal research and writing skills.

To supplement her many academic pursuits, Julie is actively involved with the larger GW Law community. After having chosen to compete in the First Year Moot Court Competition, she was selected to become a member of the GW Law Moot Court Board. Additionally, Julie ran for an Executive Board position for the Law Association for Women and was elected by her peers to serve

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as a Co-Director of Events. She chose to get involved with this organization because she plans to continue working with the Association's community of outstanding women in law. In her role as Co-Director of Events, she works to implement events for the organization, including creating and distributing care packages for 1L students and organizing panels of women lawyers to promote networking between students and practitioners. Moreover, Julie is active in paying it forward to other law students. She works in the GW Law Tutoring Program as a Torts and Criminal Procedure tutor and volunteers as a mentor to 1L students. Finally, Julie participates annually in pro bono work facilitated by GW Law and the Mid-Atlantic Innocence Project where she volunteers as a Case Screener to examine client correspondence and case history to determine whether further investigation into an incarcerated individual's alleged innocence is warranted.

For all of the foregoing reasons, I highly recommend that you hire Julie as one of your law clerks. I believe that her many outstanding qualities will prove to be valuable to your chambers. Please feel free to reach out to me if you have any questions or require any additional information.

Sincerely,

Cynthia Lee
Edward F. Howrey Professor of Law

Julie Jones

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Writing Sample

The attached writing sample is an appellate brief that I drafted for the Van Vleck Constitutional Law Moot Court Competition in the fall of my 3L year. The fact pattern was crafted by two students on the GW Law Moot Court Board with oversight by Dean Alan Morrison. The problem was about a Challenge Statute in the made-up State of New Columbia that allowed voters to challenge a congressional candidate's eligibility to be placed on the ballot pursuant to requirements contained within the United States Constitution. Voters in the candidate's district brought a challenge against the candidate, alleging that he had engaged in insurrection on January 6, 2021, and was thus ineligible to run for Congress pursuant to the Fourteenth Amendment. The candidate brought this case in federal court seeking to enjoin the New Columbia Superintendent of Elections from holding the proceedings pursuant to the Challenge Statute that would determine his eligibility. The Superintendent of Elections stayed the proceedings as the litigation proceeded throughout the federal courts. Issue One dealt with whether the candidate had standing and whether the federal courts should abstain from hearing the case pursuant to the *Younger* abstention doctrine. Issue Two addressed the constitutionality of the Challenge Statute. On appeal before the Supreme Court of the United States, the candidate was seeking a reversal of the lower courts' dismissal of his complaint for lack of jurisdiction and for failing on the merits.

I worked with a partner throughout the course of the competition. I researched, wrote, and argued Issue One. The attached version of the appellate brief has benefitted from comments made by my competition partner and generalized feedback from the competition's judges. My team represented the Petitioner, Representative Smith. Our position contained within the brief is that Representative Smith has standing, the federal courts should not abstain from hearing the case, and the state statute is unconstitutional because it usurps the powers granted to the United States House of Representatives in Article I, Section V of the Constitution. For the sake of brevity, I have included only the Argument section for Issue One of the appellate brief. The arguments in Issue One hinge on the unconstitutionality of the Challenge Statute, as was argued by my partner in Issue Two

ARGUMENT

I. This Court should reverse the dismissal of Representative Smith's complaint; the Representative has Article III standing because he is about to be subjected to proceedings arising out of the unconstitutional Challenge Statute, and the *Younger* abstention doctrine does not apply because the challenge against Representative Smith is not akin to a criminal prosecution.

Representative Smith is being subjected to unconstitutional proceedings arising out of the New Columbia Challenge Statute, thus demonstrating an injury that is appropriate for the federal courts to adjudicate. Moreover, it would be improper to abstain from hearing Representative Smith's case because a federal court has a "virtually unflagging obligation" to adjudicate proper cases or controversies brought before it. *See Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 69 (2013) (citing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). *See also New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989) (NOPSI) (holding that abstention was inappropriate when a state legislative proceeding was at issue because to decide otherwise would "make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States"). Representative Smith successfully shows that he has suffered an injury for Article III standing and that the federal courts should not abstain from hearing this case pursuant to *Younger*.

A. Representative Smith has established Article III standing because he has suffered a justiciable injury by being subjected to proceedings arising out of the unconstitutional Challenge Statute.

Article III of the United States Constitution gives federal courts the power to adjudicate "Cases" and "Controversies." U.S. CONST. art. III, § 2. A plaintiff must have a "personal stake" in litigation brought before the federal courts to satisfy the "Case" or "Controversy" requirement and to demonstrate standing. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203, 2214

(2021) (holding that the dissemination of false information by a credit reporting agency to third parties provided standing to certain plaintiffs within a class action lawsuit). Representative Smith has standing because he has suffered 1) an injury; 2) that is "likely caused by" the Superintendent of Elections; and 3) that the judicial system can adequately redress. *See id.* at 2203.

An injury must be both "concrete and particularized." *See id.* at 2203. In *TransUnion*, this Court held that the inaccurate maintenance of credit files by a credit reporting agency, combined with dissemination of the inaccurate information to third parties, was sufficient to demonstrate that a concrete injury had occurred for standing. *See id.* at 2208-09. Moreover, a future injury can be sufficiently ripe and satisfy the standing requirement if the looming injury is "certainly impending" or the future harm is at a "substantial risk" of occurring. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 161-67 (2014) (holding that the Plaintiffs sufficiently alleged an imminent injury when a state statute proscribing false statements during election campaigns affected the Plaintiffs' continued speech regarding "tax-funded abortions" because the Plaintiffs had an enforcement action brought against them before, thus making enforcement likely to happen again).

Indeed, this Court held that an injury is established by a "threatened enforcement of law" and that one need not "subject to . . . an actual arrest, prosecution, or other enforcement action" prior to challenging the law if the action is "sufficiently imminent." *Id.* at 158-59. *See also Steffel v. Thompson*, 415 U.S. 452, 454-56, 459 (1974) (holding that the Plaintiff had standing based upon a violation of his First and Fourteenth Amendment rights when he was threatened with prosecution for hand billing about Vietnam War protests and had been warned to stop twice or would likely be prosecuted if found doing it again); *Evers v. Dwyer*, 358 U.S. 202, 202-04

(1958) (holding that the Plaintiff, a Black man, had standing when his municipality enforced segregated seating on buses because he would face probable arrest if he failed to sit where he was required to by law; he was not required subject himself to arrest to establish an injury to challenge the constitutionality of the law). This Court determined that the holding in *Steffel* foreclosed a challenge to a pending administrative proceeding on ripeness grounds. *See Ohio Civ. Rts. Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 625 n. 1 (1986) ("If a reasonable threat of prosecution creates a ripe controversy, we fail to see how the actual filing of [an] administrative action threatening sanctions in this case does not."). In *Ohio Civ. Rts. Comm'n*, this Court held that a religious school had standing to challenge a pending injury when the Ohio Civil Rights Commission filed an administrative proceeding against the school for engaging in sex discrimination against a former teacher. *See id.* at 621-25.

A future injury does not establish Article III standing when it is based upon a "highly attenuated chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410-12 (2013) (holding that the Plaintiffs did not establish standing because the Plaintiffs could not be targeted by the government with the statute at issue, and there was no evidence that the government had any intentions of using the statute in such a way that would affect the specific Plaintiffs). *See also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562-64 (1992) (holding that the Plaintiffs failed to establish an injury for standing when the alleged endangerment of certain species' abroad was tied only to the Plaintiff's "'some day' intentions" of returning to those countries to observe the animals).

In this case, Representative Smith has sufficiently alleged an injury necessary for Article III standing because he is being subjected to proceedings arising out of the unconstitutional Challenge Statute. Like in *TransUnion*, in which this Court held that certain plaintiffs within a

class action had suffered a concrete injury based upon having inaccurate credit information disseminated to third parties, here, Representative Smith's injury is concrete because a challenge has already been filed against him under the Challenge Statute and these proceedings are only paused so that his case may progress through the federal courts. *See* 141 S. Ct. at 2214; Candidate Challenge Form; R. at 1; Order Granting Pet. for Writ of Cert.; R. at 1. The certain probability of the challenge demonstrates that Representative Smith's subjugation to unconstitutional proceedings is concrete and imminent—not hypothetical.

Furthermore, this case is like *Susan B. Anthony*, in which this Court held that the Plaintiffs had an injury, albeit a future one, because the Plaintiffs had intentions of continuing with the speech at issue, the speech fell within the grasp of the state statute proscribing false statements, and an enforcement action had been brought against the Plaintiffs for the speech before. *See* 573 U.S. at 158, 161-67. Similarly here, Representative Smith is already being subjected to the Challenge Statute because a challenge has been brought by voters in his district; moreover, he is continuing to engage in conduct encompassed by the Challenge Statute by continuing to run for the United States House of Representatives and campaigning throughout this process. *See* Candidate Challenge Form; R. 1; *Smith v. Morgenthal*, No. 22-sy-0428933, at 3 (D.D.N.C. June 15, 2022); R. at 3. Thus, his actions demonstrate that he will continue to face subjugation to the proceedings arising out of the Challenge Statute which will begin immediately upon the completion of this litigation in the federal courts. *See* N.C. Gen. Stat. 107-18; R. at 1; Order Granting Pet. for Writ of Cert.; R. at 1.

Moreover, this challenge proceeding is certainly impending, and this Court has held that one need not submit to an enforcement action to establish an Article III injury. In *Steffel*, this Court held that the Plaintiff had sufficiently alleged Article III standing for violation of his First

and Fourteenth Amendment rights when he was threatened with prosecution if he continued to engage in hand billing about the Vietnam War. *See* 415 U.S. at 454-56, 459. Similarly here, Representative Smith is exercising his ability to run for a position in the United States House of Representatives, and this is being infringed upon by an unconstitutional state statute that usurps the House of Representatives' powers under Article I, Section V of the constitution. *See* Compl. at 1-2; R. at 1-2. Indeed, while the Plaintiff in *Steffel* was merely facing the threat of prosecution, Representative Smith is indisputably facing an enforcement action at the end of this litigation absent a decision in his favor. *See* 415 U.S. at 454-56, 459; Order Granting Pet. for Writ of Cert.; R. at 1. Furthermore, in *Ohio Civ. Rts. Comm'n*, this Court determined that the holding in *Steffel* mandated a finding of a religious school's standing for a future injury when a pending administrative proceeding was being brought by the Civil Rights Commission against the school for engaging in sex discrimination against a teacher. *See* 477 U.S. at 621-25 & n. 1. The administrative proceeding from *Ohio Civ. Rts. Comm'n* is akin to the Superintendent of Elections for New Columbia making a determination as to whether Representative Smith is barred from the ballot after voters challenged his constitutional eligibility pursuant to the Challenge Statute. *See id.* Thus, an injury has been satisfied in this pre-enforcement context.

Accordingly, this Court should reverse the dismissal of Representative Smith's complaint due to lack of jurisdiction under Article III because Representative Smith has a justiciable injury by being subjected to proceedings arising out of the unconstitutional Challenge Statute.

B. Younger *abstention is inappropriate because Representative Smith's case is not akin to a criminal prosecution, and, even if it were, the federal courts retain discretion to hear this case.*

The *Younger* abstention doctrine prohibits federal courts from enjoining parallel and pending criminal proceedings in a state court. *See Younger v. Harris*, 401 U.S. 37, 40-41, 43-44,

49 (1971) (holding that the district court improperly intervened in a state prosecution of the Plaintiff under its Syndicalism Act when the Plaintiff had an "adequate remedy at law" and was not going to "suffer irreparable injury" because he had the ability to raise his unconstitutional claims in state court and this prosecution was not brought in bad faith). This Court has enumerated three "exceptional" instances—indeed, the only instances—in which a federal court can invoke the abstention doctrine from *Younger*: 1) "state criminal proceedings"; 2) "civil enforcement proceedings" that are more analogous to a criminal prosecution; and 3) civil proceedings that uniquely further the "state courts' ability to perform their judicial functions." *See Sprint*, 571 U.S. at 69, 72-73, 78-80 (2013) (quoting *NOPSI*, 491 U.S. at 368) (holding that abstention was inappropriate under the "civil enforcement proceeding" prong because this was an action between two private parties that was not initiated by a state actor and the suit was not occurring to sanction Sprint for a "wrongful act").

In *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 592-93 (1975), this Court held that abstention was likely appropriate when a state civil enforcement action was "more akin to a criminal prosecution." In *Huffman*, the Plaintiff sued in federal court alleging a state nuisance statute was unconstitutional after the Defendants, a sheriff and prosecuting attorney, succeeded in a nuisance action against the Plaintiff for displaying obscene films by shutting the theater down and allowing the theater's property to be seized and sold. *See id.* at 595-98, 611-13. The Court held that this proceeding was related to criminal prosecutions regarding obscenity and that the state's interest was the same as those that "underlie its criminal laws." *See id.* at 604-05.

Considerations that have come to be known as the "*Middlesex* factors" are also relevant when federal courts are contemplating *Younger* abstention, but these factors are not dispositive. *See Sprint*, 571 U.S. 81-82. The factors look to whether 1) there is an "ongoing state judicial